HOUSEHOLD GOODS TRANSPORTATION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT

OCTOBER 20, 1981

Serial No. 97-79

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE
87-315 O WASHINGTON : 1982

S261-16

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

BOB PACKWOOD, Oregon, *Chairman*

BARRY GOLDWATER, Arizona
HARRISON H. SCHMITT, New Mexico
JOHN C. DANFORTH, Missouri
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
SLADE GORTON, Washington
TED STEVENS, Alaska
BOB KASTEN, Wisconsin

HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
HOWELL HEFLIN, Alabama

WILLIAM M. DIEFENDERFER, *Chief Counsel*
GERALD J. KOVACH, *General Counsel*
ANNE GAVAGHAN, *Staff Director*
CINDY DOUGLASS, *Staff Counsel*
AUBREY L. SARVIS, *Minority Chief Counsel*
EDWIN K. HALL, *Minority General Counsel*
WILL K. RIS, *Minority Staff Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

JOHN C. DANFORTH, Missouri, *Chairman*

LARRY PRESSLER, South Dakota
HARRISON H. SCHMITT, New Mexico
NANCY LANDON KASSEBAUM, Kansas
SLADE GORTON, Washington

RUSSELL B. LONG, Louisiana
ERNEST F. HOLLINGS, South Carolina
DONALD W. RIEGLE, JR., Michigan
HOWELL HEFLIN, Alabama

CONTENTS

Page

Opening statement by Senator Danforth 1

LIST OF WITNESSES

Collins, Thomas R., Jr., chairman of the board, National Moving & Storage Association, accompanied by Dr. T. Peter Ruane, president; Matthew M. Smith, Jr., chairman, Military Affairs Committee; and Roscoe Conklin, member, National Institute of Certified Moving Consultants 19
Prepared statement of Dr. Ruane 24
Prepared statement of Mr. Conklin 28

Epstein, Sidney, chairman of the board, Household Goods Carriers' Bureau, accompanied by Thomas Auchincloss, general counsel, Household Movers Carriers' Bureau; Francis L. Wyche, immediate past president, Household Movers Carriers' Bureau; and Joseph Harrison, president, Householder Carriers' Bureau 31
Prepared statement 37

Freitag, Earl, vice president, United Van Lines; David Nilson, director of programs, Nilson Van and Storage, Inc.; Charles G. McDaniel, Jr., president, Hilldrup Van & Storage, Inc.; and G. Zan Golden, senior vice president, North American Van Lines, Inc 42
Prepared statement 45
Letter of October 27, 1981 from Mr. Zan Golden 53

Knauer, Hon. Virginia H., Special Assistant to the President and Director, Office of Consumer Affairs, accompanied by Charles Cadwell, General Counsel 2
Prepared statement 6

Scull, Ward, Mayflower Warehousemen's Association, accompanied by Tom Stephens, staff director 29
Prepared statement 30

Taylor, Hon Reese H., Chairman, Interstate Commerce Commission, accompanied by Jan Rosenak, Legislative Counsel, and Ray Atherton, Office of Consumer Protection 9
Prepared statement 14

HOUSEHOLD GOODS TRANSPORTATION ACT

TUESDAY, OCTOBER 20, 1981

U.S. SENATE,
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 9:35 a.m. in room 1318 of the Dirksen Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. The Household Goods Transportation Act of 1980 was signed into law on October 15, 1980. That law requires the Senate Commerce Committee to conduct annual oversight hearings on the act. This is the first such hearing.

I understand that this act and the Motor Carrier Act have not been in effect for a long enough period of time to draw conclusions as to their effect on the industry and consumers.

There are, however, some encouraging signs that the two acts are accomplishing the purposes for which they were designed.

I understand those purposes to be reducing the regulatory and paperwork burden on industry, providing for increased price and service options, and strengthening penalties for violation of necessary consumer protection regulations.

I look forward to hearing from those in government and industry who have been involved in implementation of the act and can comment on the progress made in achieving the purpose of the act.

The statement of each witness will be placed in the record in its entirety. We have some six different witnesses, and that—the number six would include some panels with several witnesses.

So therefore it would be necessary, if we're going to get through this hearing with reasonable speed, for each witness to limit his or her testimony, or its testimony in the case of a panel, to 10 minutes, with the understanding that any statement will, of course, be included in the record.

The first witness is a long-term friend, a former friend of the Missouri attorney general's office when I was attorney general of Missouri, and the erstwhile consumer representative in the White House, Virginia Knauer.

We are delighted to have you with us.

STATEMENT OF HON. VIRGINIA H. KNAUER, SPECIAL ASSISTANT TO THE PRESIDENT AND DIRECTOR, U.S. OFFICE OF CONSUMER AFFAIRS, ACCOMPANIED BY CHARLES CADWELL, GENERAL COUNSEL

Ms. KNAUER. Thank you, Mr. Chairman.

I am happy to be here this morning to discuss the Household Goods Transportation Act. I am joined by Charles Cadwell, who, as my general counsel, helped prepare this testimony.

In the interest of time, Mr. Chairman, I'm going to just highlight my testimony.

On behalf of the administration and on behalf of consumers, I would like to share my enthusiasm with the Household Goods Transportation Act. As you may know, in June I testified before the House Public Works and Transportation Committee on the same subject. At that time I expressed my appreciation for the balanced job of implementation done to date by the Interstate Commerce Commission.

I am afraid this morning I have little more to report, given that the ICC rules were stayed by the U.S. Court of Appeals for the Seventh Circuit in June, and a decision has not yet been rendered by the court.

Nevertheless, I would like to share with you this morning my impressions of the act.

The moving industry has been an increasingly regulated sector of the trucking industry since the Motor Carrier Act of 1935 was signed. In 1980, Congress chose to reverse that direction and permit movers to offer new services. By providing for pricing and service options, Congress essentially mandated that movers respond not to regulation but to market forces.

A list of the new services offered since last October demonstrates that movers do have the ability to respond to competition. Most movers now offer some sort of full-value protection which pays consumers the replacement costs of lost or damaged household goods. Many movers are now giving binding estimates so that consumers can know what the move will actually cost.

One mover has promised to make delivery within an agreed upon 2-day period and to pay consumers $100 per day for every day a shipment is late. One van line has even offered a discount for senior citizens. Increasingly, movers are finding themselves compelled by competitive forces to respond to innovative service offerings by the van lines who are most aggressive in this area.

There are several other issues that demonstrate the need for Congress to oversee the ICC's implementation of this act and the Motor Carrier Act.

The first is the issue of entry into the household goods transportation business. The Motor Carrier Act reduced regulatory barriers to entry into the entire trucking business, including the household moving sector. However, some carriers continue to expend their competitive energy by opposing new applications to enter the trucking business.

As I have said before, I believe competition should take place in the marketplace and not in the recesses of an ICC docket.

Those carriers who engage in protests hurt not only those companies whose service they oppose but, more importantly, the shipping public.

The other issue to which I urge your attention is collective ratemaking conducted by rate bureaus immune from antitrust laws. It is my belief that the full benefits of reform will not be achieved until movers and other truckers set prices in the same competitive fashion as thousands of other American businesses.

Turning to the rulemaking provisions of the Household Goods Transportation Act, I would like to simply indicate our continued support for the work done by the ICC in relaxing many previous regulatory restraints on mover activity. I am disappointed that the rules have not been permitted to go forward into effect.

The rules which the ICC has rewritten have accomplished several important objectives of the act. Consumer information is simplified and improved; paperwork is simplified and reduced; regulatory requirements on movers are now largely disclosure and notice type. The few rules which impose operating requirements have been established in a minimally burdensome fashion.

Finally, Mr. Chairman, in the area of consumer redress the Commission has approved several industry proposed third party dispute resolution programs, finding that they meet the criteria of section 7 of the act. I spoke with many members of the American Movers Conference last week, and I am pleased that so many movers plan on joining on one or another of these programs.

The proposals submitted to the ICC have limited themselves to settlement of claims related to loss and damage of transported property. I think the narrowness of this claim settlement program works as a disservice to the consumer who will, as a result, be forced to bring an inconvenience claim for late delivery or any claims relating to charges before other tribunals such as local courts.

I am nevertheless pleased that the moving industry has come as far as they have.

In conclusion, Mr. Chairman, I am gratified to see so many of the moving industry taking advantage of the opportunities afforded by the reforms of the Motor Carrier Act and Household Goods Transportation Act. Both statutes seem to be working in the ways we had hoped and predicted. It is too early, of course, to have comprehensive data on the full impact of the Household Goods Transportation Act, but the evidence to date points to increased success for movers who embrace the free market and improved services and prices for the customers served by this industry.

Mr. Chairman, I appreciate your invitation to be here this morning, and I and my General Counsel will be happy to answer any questions the committee may have.

Senator DANFORTH. Thank you, Mrs. Knauer. I think I didn't accurately state your position. You are now—4 or 5 years ago you were the President's Assistant——

Ms. KNAUER. I was Special Assistant for Consumer Affairs.

Senator DANFORTH. That's your position now also?

Ms. KNAUER. My position now is Special Assistant for Public Liaison, which includes consumers, the aging, health care, the disabled, and safety.

Senator SCHMITT. She runs the country, Mr. Chairman.

Ms. KNAUER. I am once again—I shouldn't say I remain, I am once again the Director of the Office of Consumer Affairs.

Senator DANFORTH. Good. I of course remember you very well and happily from our service together in a similar area when I was Attorney General and when you had this position.

Ms. KNAUER. We worked well together on behalf of consumers, Mr. Chairman.

Senator DANFORTH. You have no doubt from the standpoint of consumers that we are on the right course with this legislation, and that it's worked out well. It's given them more of a choice, that competition is in their interests.

Ms. KNAUER. Yes; very much so. And I'm just delighted that so many of the movers are moving into the marketplace in such a competitive fashion. And this can only hold forth good for the consumer.

Senator DANFORTH. Senator Schmitt.

Senator SCHMITT. Thank you, Mr. Chairman. It's a pleasure to be with you this morning, Ms. Knauer. There has been some discussion in the press at least in recent months that the ICC and maybe others in the Reagan administration have been back pedaling on deregulation within trucking as a whole and possibly even in household movers area specifically.

Do you feel that that's a fair charge?

Ms. KNAUER. No; I don't. Of course, at the moment, as you know, the full implementation of the Household Goods Transportation Act is stalled because it's held up in court.

Senator SCHMITT. But you think that the ICC and the administration are fully committed to the intent and specifics of the deregulation acts that relate to the trucking industry?

Ms. KNAUER. I think so; yes.

Senator SCHMITT. Do you think there's any interest in moving a little bit farther than we did in the last Congress?

Ms. KNAUER. That I couldn't say.

Senator SCHMITT. Specific questions from the movers in New Mexico; I've heard varying opinions on the question of binding estimates. One mover claims that the binding estimate often results in the consumer paying more than regular rates. Another mover tells me that the larger national moving houses bid low. In fact, very low. Putting them in a better competitive position relative to the smaller businessman.

Do you view these practices as possible barriers to competition or just part of the adjustment process?

Ms. KNAUER. No; I figure if one company gives a binding estimate, consumers are learning to shop around. And they are going to go to that company that offers them the best deal. I think it's going to be a form of competition. I don't think it's going to harm consumers in any way.

Senator SCHMITT. You don't think that the binding estimate does force—because it's binding force higher estimates?

Ms. KNAUER. I don't think so. I think the average consumer, and I'm talking about myself, I would rather pay a little more if I knew that the price being quoted was firm, and I wouldn't have to pay any more. That would be better than receiving one of those c.o.d.

surprises that sometimes shock people where there isn't a binding estimate.

Senator SCHMITT. What about the other side of that coin, and that is the larger businesses being able to bid low?

Ms. KNAUER. Are you talking about volume discounts, Senator?

Senator SCHMITT. Well, this is—this is an indication that the binding estimate—some movers, you know, they're on different sides of this thing, and there is an adjustment time in here. But some smaller movers are saying that they are being underbid by the larger groups in this binding estimate area.

Ms. KNAUER. I've heard of no complaints in that area.

Senator SCHMITT. You just heard of one, and we'll provide the correspondence to you.

Ms. KNAUER. Yes; I still think that on the whole the binding estimate is a great consumer benefit.

Senator SCHMITT. But the point is, don't you think a large moving concern with greater capital resources and volume activity can take a greater risk on a binding estimate than a small one can?

Ms. KNAUER. Oh, they probably can but——

Senator SCHMITT. So there's a potential for underbidding; right?

Ms. KNAUER. Yes.

Mr. CADWELL. Senator Schmitt, in the moving business in my experience, the cost of an individual move varies less between large and small movers than do costs between large and small businesses in other industries. Thus, a large company has generally very similar costs to a small company and couldn't really underbid without losing money on the individual move. The costs aren't that much less.

Senator SCHMITT. That's not what I am saying. I guess I'm not making myself very clear. What I'm saying is that in a binding estimate environment there's a certain risk to the mover; right?

Mr. CADWELL. Yes.

Senator SCHMITT. And a large company with larger resources can assume a greater risk of being too low than a small mover can with small resources. That is, the cost to the mover of being wrong is greater if you're small, the relative cost. That's all I'm saying. It may turn out that this isn't a problem. But I can see where there's a potential for a problem.

Mr. CADWELL. It's a problem that all small businesses have.

Senator SCHMITT. Exactly.

Mr. CADWELL. Risks cost them more.

Senator SCHMITT. And the binding estimate means there is no opportunity after the fact to make adjustments to take care of the unknowns that were there when you made your bid.

Ms. KNAUER. I would like to add that a binding estimate is made by a professional who comes in and says this is going to cost so much. I would hope that the smaller company has equally effective estimators, so that they do not end up in the hole. If they lose money once or twice, they will soon upgrade the caliber of the people who perform the estimates.

Senator SCHMITT. I agree with that. I hope that that's true also, but a small company losing money once or twice is going to be in a more serious financial position than a large company losing money

once or twice. That's the only point I'm trying to make. And I just hope that you will maybe go back and look at this and see whether you see any signs of this being a problem for small business people.

In New Mexico, all of our local moving is done by small business people unless they are being outbid by larger interstate groups.

Ms. KNAUER. I think on the other hand, to get started in any business, they're likely to underbid the big ones.

Senator SCHMITT. That's what I'm trying to find out. Here we are, we're speaking in theory, and the question is what do the facts show.

Ms. KNAUER. I think a year from now we may have some figures on that, Senator.

Senator SCHMITT. Thank you, Mr. Chairman.

Senator DANFORTH. I think, Senator Schmitt, as I understand it, the Interstate Commerce Act does prohibit predatory pricing.

Senator SCHMITT. I understand it, Mr. Chairman. I'm not talking about predatory. I'm just talking about whether I can assume a greater risk in making a binding estimate. A big company can assume a greater risk, at least in theory, and I just want to find out if that's actually happening in practice, or are there other extenuating circumstances that mean that isn't going to happen.

Senator DANFORTH. My own understanding is that there is nothing wrong about somebody quoting a lower price than somebody else for whatever reason, provided that it's not predatory pricing. And in the case of predatory pricing, the Interstate Commerce Act has an express provision in that regard.

Thank you very much. It's good to see you again.

Ms. KNAUER. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON. VIRGINIA H. KNAUER, SPECIAL ASSISTANT TO THE PRESIDENT AND DIRECTOR OF THE U.S. OFFICE OF CONSUMER AFFAIRS

Mr. Chairman and members of the committee, I am happy to be here this morning to discuss the Household Goods Transportation Act. I am joined by Charles Cadwell who, as my General Counsel, helped prepare this testimony.

On behalf of the Administration and on behalf of consumers I would like to share my enthusiasm with the Household Goods Transportation Act. As you may know, in June I testified before the House Public Works and Transportation Committee on this same subject. At that time, I expressed my appreciation for the balanced job of implementation done to date by the Interstate Commerce Commission. I am afraid that this morning I have little more to report, given that the ICC rules were stayed by the U.S. Court of Appeals for the Seventh Circuit in June and a decision has not yet been rendered by the Court. Nevertheless, I would like to share with you this morning my impression of the Act.

The Household Goods Transportation Act is only a year old and it cannot be viewed without also looking at the impact of the Motor Carrier Act of 1980 which was signed a year ago July. Even though the ICC's rules implementing the mover bill are not yet effective, there are important signs that this legislation is a success and will continue to be. Unfortunately, it is still too early to present detailed data on industry performance and serviced to consumers. Nevertheless, there are several clear trends that I believe deserve your attention.

IMPROVED PRICE AND SERVICE CHOICES BENEFIT CONSUMERS

The moving industry has been an increasingly regulated sector of the trucking industry since the Motor Carrier Act of 1935 was signed. In 1980 Congress chose to reverse that direction and permit movers to offer new services. By providing for pricing and service options Congress essentially mandated that movers respond not to regulation but to market forces. As you may know, the industry performance record under regulation was not an entirely happy one. In 1979 alone, complaints to

the Interstate Commerce Commission about interstate movers exceeded 24,000. Similar levels prevailed in the first six months of 1980 prior to passage of the Household Goods Transportation Act.

The new law gives the moving industry a chance to change all this. A list of the new services offered since last October demonstrates that movers do have the ability to respond to competition: First, most movers now offer some sort of "full value protection" which pays consumers the replacement costs of lost or damaged household goods rather than simply the depreciated purchase price; second, many movers are now giving firm price quotes or binding estimates, so that consumers can now know what the move will actually cost. While many movers are not promoting their binding estimates as agressively as I would hope, as consumers increasingly realize that binding estimates are available I expect that they will turn to those companies that offer them. As a result, the full benefits of this price certainty and price competition will be felt; third, one mover has developed a simplified tariff that offers a choice of three levels of service, refunds for poor service and charges based on volume rather then weight; fourth one mover has promised to make delivery within an agreed upon two-day period and to pay consumers $100 per day for every day a shipment is late; and fifth, one van line has offered a discount for senior citizens.

Increasingly movers are finding themselves compelled by competitive forces to respond to innovative service offerings by the van lines who are most aggressive in this area. Given the uncertainty over the Commission's rules, admittedly caused by the carrier's own law suit, I think that many in the industry have responded well to the opportunities contained in this Act.

ECONOMIC REGULATION

There are several issues that demonstrate the need for Congress to oversee the ICC's implementation of this Act and the Motor Carrier Act. The first is the issue of entry into the household goods transportation business. The Motor Carrier Act reduced regulatory barriers to entry into the entire trucking business including the household moving sector. Using the provisions of the new law, many existing carriers have expanded their operations to new territories or new commodities; others have applied for contract carrier authority. However, some carriers continue to expend their competitive energy by opposing new applications to enter the trucking business. By using the protest process to delay applications, I believe, that some carriers limit the benefits the public should expect from the Motor Carrier Act and the Household Goods Transportation Act. As I have said before, I believe, that competition should take place in the marketplace and not in the recesses of an ICC docket. The goal of the Motor Carrier Act was to prompt individual carriers to act independently to serve their markets. Those carriers who have not yet gotten the message, who engage in protests, especially joint protests, hurt not only those companies who service they oppose, but more importantly, the shipping public.

The other issue which I urge your attention to is collective rate-making conducted by rate bureaus immune from antitrust laws. It is my belief that the full benefits of reform will not be achieved until movers and other truckers set prices in the same competitive fashion as thousands of other American businesses.

Let me explain why collectively set prices are of concern even as we deregulate much of the moving industry. The Household Goods Transportation Act encourages movers to offer innovative prices and services. Binding estimates, guaranteed delivery, senior citizen discounts and even seasonal rates are all examples of innovative marketing that responds to consumer demands and the supply of moving industry resources. The benefits to the public from innovative rate and service offerings can be obliterated, however, when prices and services are determined outside of the competitive marketplace. When the charge for a binding estimate or for a guaranteed delivery is set collectively, or when movers agree on a seasonal rate increase, these innovations lose the marketplace limitations which would otherwise assure that they are responsive to consumers. A seasonal surcharge imposed in a competitive atmosphere will be tempered by the knowledge that other carriers may undercut it.

The experience of this past summer bears this out. The 10 percent surcharge imposed by the industry's main rate bureau was trimmed to 3 percent by the action of individual carriers who adopted across-the-board 7 percent rate reductions. I question why we ought to permit the collective increase to be made at all. Individual carriers are apparently capable of making their own marketing and pricing decisions. Without competitive limits on the timing, level and marketing of all innovative rate increases, I see them as little more than a new way to take

advantage of the fact that antitrust immunity for single carrier rates is being phased out rather than eliminated immediately.

ICC RULES

Turning to the rulemaking provisions of the Household Goods Transportation Act, I would like to simply indicate our continued support for the work done by the ICC in relaxing many previous regulatory restraints on mover activity. I am disappointed that the rules have not been permitted to go into effect and I think that the opposition to the rules and the consequent delay have set us back to the detriment of consumers.

The rules which the ICC has re-written have accomplished several important objectives of the act: First, consumer information is simplified and improved. Paperwork is simplified and reduced. Regulatory requirements on movers are now largely disclosure and notice type; second, the few rules which impose operating requirements have been established in minimumly burdensome fashions. For example, the reasonable dispatch rule does not establish a time period within which movers must deliver, it simply says "you must deliver when you promised to." The rules does not even apply to movers who provide a late delivery penalty plan. Similarly, all of the consumer protection rules do not even apply to so-called second and third proviso shipments, i.e. those shipments of artworks, exhibitions and other non-consumer fixtures; and third, the Commission has established performance standards for several key rules, providing the industry with useful guidance on enforcement priorities. In comments to the ICC, I supported the proposed standard.

DISPUTE SETTLEMENT

Finally, Mr. Chairman in the area of consumer redress the Commission has approved several industry-proposed third party dispute resolution programs finding that they meet the criteria of Section 7 of the Act.

I spoke with many members of the American Movers Conference last week and I am pleased that so many movers plan on joining one or another of the programs. I must say though that I think the industry has displayed much caution in approaching informal dispute settlement. The proposals submitted to the ICC have limited themselves to settlement of claims related to loss and damage of transported property. I think the narrowness of this claims settlement program works as a disservice to the consumer who will, as a result, be forced to bring an inconvenience claim for late delivery or any claims related to charges before other tribunals such as local courts.

I am nevertheless pleased that the moving industry has come as far as they have. I have urged moving companies to work with my office to improve and implement dispute settlement programs and I believe that experience will show that a more generous attitude toward claims handling and dispute settlement will improve industry-customer relations and individual company performance. My experience with informal dispute settlement programs in other industries suggests that this is the case and that the results are worth the effort.

In conclusion, Mr. Chairman, I am gratified to see so many in the moving industry taking advantage of the opportunities afforded by the reforms of the Motor Carrier Act and the Household Goods Transportation Act. Both statutes seem to be working in the ways we had hoped and predicted. I am disappointed that lawsuits have held up many of the ICC reforms which responded to the Household Goods Transportation Act, but, I look forward to resolution of that dispute by the Federal Appeals Court soon. In short, it is too early to have comprehensive data on the full impact of the Household Goods Transportation Act, but the evidence to date points to increased success for movers who embrace the free market and improved service and prices for the customers served by this indsutry.

I appreciate your invitation to be here this morning and I would be pleased to answer any questions the Committee may have.

Thank you.

Senator DANFORTH. The next witness is Hon. Reese Taylor, Chairman of the Interstate Commerce Commission.

STATEMENT OF HON. REESE H. TAYLOR, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY JAN ROSENAK, LEGISLATIVE COUNSEL, AND RAY ATHERTON, OFFICE OF CONSUMER PROTECTION

Mr. TAYLOR. Thank you, Mr. Chairman, and good morning to you and to Senator Schmitt. I would like to say for the record that I have with me this morning Jan Rosenak, our legislative counsel, and Ray Atherton of our Office of Consumer Protection.

Thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission with respect to the Household Goods Transportation Act of 1980. In passing this act, Congress recognized that the household goods moving industry, unlike the rest of the commercial trucking industry, predominantly serves individuals who have little, if any, experience in purchasing transportation services. These individual shippers may move only once or twice in their lifetimes and, thus, lack an understanding of the industry and how to negotiate effectively with it.

Specific legislation, in addition to the Motor Carrier Act of 1980, was deemed necessary to assure consumer protection and to address industry complaints that excessive paperwork requirements and overregulation increased carrier costs and limited competition without improving service. Accordingly, the act's purpose, as set forth in the "Declaration of Policy," was threefold: One, the reduction of unnecessary regulation; two, establishment of maximum carrier flexibility in pricing of service; and three, strengthening remedies for violation of regulations that are necessary for protection of individual shippers. Today we are reporting on the actions the Commission has undertaken to carry out these legislative objectives.

Section 6 of the act required the Commission to begin a proceeding to revise its operational rules. We complied the day after the act was signed by issuing our proposals in Ex Parte No. MC-19, Sub-No. 36, "Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)," on October 16, 1980. After considering numerous comments from industry and consumer interests, we modified the proposals and issued final rules, which were to become effective on June 9, 1981. The rules were challenged by certain carriers, and the Court of Appeals for the Seventh Circuit has stayed them pending further order. Because we have not yet had experience under these rules, we cannot report on their effect on the industry. However, we believe they will benefit both carriers and individual shippers.

The new operational rules should reduce paperwork requirements for carriers by eliminating or substantially reducing the requirements of various reports, including the following: One, annual performance reports; Two, quarterly reports on estimates; and three, notices of creation and termination of agency agreements.

With respect to annual performance reports, the new rules would no longer require information on commercial and Government shipments. Also, the rules would exempt carriers from filing these annual reports unless they delivered more than 100 shipments per year involving individual shippers. We estimate an aggregate savings to the industry of almost 22,000 work hours per year from

these exemptions to the annual performance reports. Other work-hour savings result from elimination of the quarterly filing of reports of instances where actual charges are more than 10 percent above or below initial estimates; this change should result in approximately 14,000 work-hour savings to the industry per year. Finally, the new rules should save the industry approximately 3,000 work hours per year by eliminating the requirement that carriers file a notice of the creation and termination of agency agreements with the Commission.

The new rules also would eliminate the requirements that, one, carriers obtain signed receipts from shippers stating that they have received certain premove information, and two, more than one weight ticket be completed when both the tare and gross weighings are conducted on the same scale. While we are unable to estimate precise the work-hour savings that might be derived from these two changes, they will allow carriers to reduce paperwork.

In addition, the new rules would:

One. Remove the prohibition against discounts and rates based on prepayment of charges;

Two. Remove the requirement that an agent and principal carrier maintain the same rates for the same service;

Three. Permit the establishment of two or more levels of rates for transportation between the same two points;

Four. Permit the selling of transit cargo liability insurance to individual shippers; and

Five. Permit the use of charge card plans to pay for the transportation service without prior Commission approval. The rules should promote rate and service innovations, thereby increasing competition. Even though the rules have not yet become effective, some carriers are already offering rate and service innovations in anticipation of the new rules.

Section 6 of the act reaffirmed the Commission's authority to issue regulations to protect individual shippers. To meet this objective, the new rules require that:

One. Improved, easy to read pre-move information be distributed to inform shippers of their rights and responsibilities;

Two. Shippers be fully and accurately informed of the existence and use of claims dispute resolution programs;

Three. All carriers establish specific customer complaint and inquiry handling programs.

Four. Shippers be permitted to observe any weighing of a shipment.

Five. Shippers be notified of impending service delays.

Six. Carriers continue to permit shippers to gain delivery of a shipment upon payment of 110 percent of the estimated charges when the shipment moves on a nonbinding estimate, and to have at least 30 days to pay any balance due.

Section 6 also permits the Commission to establish performance standards for regulations designed to protect individual shippers. A rulemaking proceeding in Ex Parte No. MC–19 (Sub-No. 36A), "Practices of Motor Common Carriers of Household Goods (Performance Standards)," now pending before the Commission, proposes performance standards in areas of industry operation dealing

with estimating practices, reasonable dispatch requirements, and the handling of claims for loss, damage, or delay.

I might point out at this juncture that these two proceedings have been conducted separately. There was no requirement that they be done together. Also, we have felt that there is no point in proceeding with the performance standards proceeding until the court ban on the operational standards proceeding is lifted and the rules become effective.

The Commission does plan to use random sampling techniques to review carrier compliance with these standards after they are in final form.

Pursuant to section 7 of the act, the Commission, on April 28, 1981, adopted a final policy statement concerning dispute resolution in Ex Parte No. MC-19 (Sub-No. 37), "Claim Dispute Settlement Programs for Household Goods Carriers." Under this policy, we will evaluate proposed programs to make certain they resolve shipper disputes fairly, expeditiously, and inexpensively. If, after notice and opportunity for hearing, the Commission finds the proposed program fails to meet the act's requirements, we will withhold approval of the program. The Commission, however, did not outline specific dispute settlement program regulations because the act clearly set out detailed requirements as to what these programs should include. We have already approved the programs proposed by the Mover's and Warehouseman's Association of America and the American Movers Conference, both of which give shippers the option to submit claims to arbitration by the American Arbitration Association. We believe that, with the implementation of acceptable settlement dispute programs, fewer shippers will have complaints and Commission involvement in some claim dispute matters will abate.

The provisions of the Household Goods Transportation Act established various new price and service options which should have a beneficial impact on the industry and shippers. Section 4 allows carriers to offer rates based on binding estimates—that's actually a statutory provision now, Mr. Chairman—and to include penalty provisions for failure to meet guaranteed pickup and delivery dates on transportation subject to the jurisdiction of the Commission. Ten of the major carriers have already instituted binding estimates; two of these carriers offer the shipper the benefit of the binding estimate price or the actual weight-based price, whichever is lower. Four of the major carriers have a form of guaranteed service option, some of which include a "failure to perform" allowance, where, on shipments weighing 2,000 pounds or more, they will be liable for up to $100 for each day of delay beyond the delivery time indicated on the order for service.

Complaints have declined since passage of the act, but in light of a decrease in tonnage carried, and a concomitant overavailability of equipment, we cannot determine what part of this drop is due to enactment of the act. However, since a large percentage of consumer complaints relate to underestimation of moving charges or extended delivery delays, we believe this section of the act will clearly have a positive impact on shipper-carrier relations.

While the statute specifically allows binding estimates and guaranteed service dates, it does not preclude carriers from implement-

ing other innovative rates or practices. Carriers have taken advantage of this flexibility and that afforded by the Motor Carrier Act of 1980 to develop new programs. For example, a number of major carriers now offer current value or full replacement liability protection plans.

The household goods industry is heavily dependent on agents rather than direct company employees to handle actual transportation operations. For the first time, section 5 of the act gives the Commission explicit authority to proceed directly against dishonest or unfit agents where the principal carriers have been unwilling or unable to curb them. In accordance with congressional intent, the Commission will continue to hold the carriers primarily responsible for the acts of their agents. We expect each carrier to engage in self-policing of its agents, and we will not hesitate to seek redress and compliance from a carrier for the acts of its agents. Nevertheless, the added authority gives the Commission a powerful enforcement tool, in that it allows the Commission to move directly against household goods agents. At this time, the Commission does not see a need to step up investigation of agents and their activities. Rather, as stated in our October 14, 1980, policy statement and in answer to industry inquiries, we will continue to rely primarily on consumer complaints and compliance monitoring programs to direct investigation and policing efforts.

It is still too early to determine the overall effect of the act on the household goods industry and its shippers. We expect, however, that it will be extremely beneficial. As mandated by Congress, the Commission has moved expeditiously to implement rules and issue policy statements which we believe carefully balance carrier and consumer interests. We have significantly decreased paperwork and unnecessary regulation, while maintaining shipper protection. We expect, therefore, that the Household Goods Transportation Act of 1980 will help eliminate industry abuses and provide a safe, stable, and financially sound household goods transportation system.

Finally, available information suggests that the overall financial condition of the industry has improved somewhat in the last 18 months. Although tonnage is down, based on data for the first 6 months of this year, we estimate that household goods carriers will have total revenues of $1,765,606 for 1981, an increase of 5.3 percent over 1980 and 29.1 percent over 1979. Average revenue per ton has also increased, and the operating ratios of the major carriers generally reflect a more profitable operation. In sum, the financial status of the industry appears to have improved since passage of the legislation.

This concludes my remarks, and at this time I will be happy to try to answer any questions that you may have.

Senator DANFORTH. Thank you, Chairman Taylor.

Let me ask you: In your view, you say the financial status of the industry appears to have improved since the passing of the legislation.

Is there a linkage, or is that just a fortuitous circumstance?

Mr. TAYLOR. I think it's very difficult to tell because of a number of things such as increasing costs and a somewhat recessionary economy. Because of these, it's difficult to tell if there's any direct

connection between passage of the act and the financial improvement of the industry.

We do have some figures that I can put on the record, if you'd like.

Senator DANFORTH. All right.

Mr. TAYLOR. In 1979, the industry transported an estimated 1,697,560 shipments within the description of household goods. In 1980, the number of shipments decreased to an estimated 1,543,741, a decrease of 9 percent.

However, in 1979, the industry transported an estimated 3,519,960 tons of household goods of all descriptions. And in 1980, the tons transported increased to 3,667,121, an increase of 4 percent.

In 1979, the total estimated gross revenue of the industry was $1,367,131,000. In 1980, the estimated gross revenue increased to $1,676,203,000, an increase of 22.6 percent. A little guy from Nevada isn't used to those big figures.

In 1979, the estimated average revenue per ton was $388.43. In 1980, the estimated revenue per ton as $457.09, an increase of 17.7 percent.

Based on available data relating only to the first 6 months of 1981, it is estimated that during 1981 the industry will:

Transport 3,195,058 tons, which is a decrease of 12.9 percent from 1980;

Have total revenues, however, of $1,765,606,000, which is an increase of 5.3 percent over 1980, and 29.1 percent over 1979.

Between 1979 and the first 6 months of 1981, the average revenue per ton increased from $388 to $553, an increase of 42.5 percent.

So, the figures do look good. The problem is the connection that you mentioned—whether we can really attribute this to the act completely is another matter.

Senator DANFORTH. Well, I thank you.

I am sure that that will make interesting reading, although it didn't make very interesting listening.

In rulemaking, Mr. Taylor, have you been working closely with the industry?

Has the ICC been working closely with the industry?

Mr. TAYLOR. yes, the Commission has worked closely with the industry in it's rulemakings.

Unfortunately, at the present time the seventh circuit has stayed the major rulemaking, and everything is sort of standing still. We are awaiting the removal of that ban so that we can move forward and not only effectuate the operational standards in that rulemaking, but the performance standards, as well.

Yesterday, I asked the General Counsel's Office if there was any hint at all as to date when that ban might come off. They really didn't have any idea. It could be momentarily, or it might be next spring.

Senator DANFORTH. Do you have any advice to the Congress at this point? It's been almost exactly a year since this bill became law.

Do you have any advice to us at this point, or is it too early?

Mr. TAYLOR. I really think it's too early.

I would point out with regard to the question Senator Schmitt got into with respect to binding estimates. That there's a statutory provision which allows for, but does not mandate them.

It may be worthwhile, in view of his concern, to have a further look at that. I think there are some—if I'm not mistaken—10 major carriers that offer a form of binding estimate at the present time. But I really think it's premature to come to any firm judgments at this point in time, until we've had more experience, and until we've also had a chance to effectuate our rules.

Senator DANFORTH. Thank you very much, sir.

[The statement follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and members of the committee, thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission with respect to the Household Goods Transportation Act of 1980. In passing this Act, Congress recognized that the household goods moving industry, unlike the rest of the commercial trucking industry, predominantly serves individuals who have little, if any, experience in purchasing transportation services. These individual shippers may move only once or twice in their lifetimes and, thus, lack an understanding of the industry and how to negotiate effectively with it.

Specific legislation, in addition to the Motor Carrier Act of 1980, was deemed necessary to assure consumer protection and to address industry complaints that excessive paperwork requirements and overregulation increased carrier costs and limited competition without improving service. Accordingly, the Act's purpose, as set forth in the Declaration of Policy, was threefold: (1) the reduction of unnecessary regulation; (2) establishment of maximum carrier flexibility in pricing of service; and (3) strengthening remedies for violation of regulations that are necessary for protection of individual shippers. Today, we are reporting on the actions the Commission has undertaken to carry out these legislative objectives.

Section 6 of the Act required the Commission to begin a proceeding to revise its operational rules. We complied the day after the Act was signed by issuing our proposals in Ex Parte No. MC-19 (Sub-No. 36), Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations), on October 16, 1980. After considering numerous comments from industry and consumer interests, we modified the proposals and issued final rules, which were to become effective on June 9, 1981. The rules were challenged by certain carriers, and the Court of Appeals for the Seventh Circuit has stayed them pending further order. Because we have not yet had experience under these rules, we cannot report on their effect on the industry. However, we believe they will benefit both carriers and individual shippers.

The new operational rules should reduce paperwork requirements for carriers by eliminating or substantially reducing the requirements of various reports including the following: (1) annual performance reports; (2) quarterly reports on estimates; and (3) notices of creation and termination of agency agreements.

With respect to annual performance reports, the new rules would no longer require information on commercial and government shipments. Also, the rules would exempt carriers from filing these annual reports unless they delivered more than 100 shipments per year involving individual shippers. We estimate an aggregate savings to the industry of almost 22,000 workhours per year from these exemptions to the annual performance reports. Other workhour savings result from elimination of the quarterly filing of reports of instances where actual charges are more than 10 percent above or below initial estimates; this change should result in approximately 14,000 workhour savings to the industry per year. Finally, the new rules should save the industry approximately 3,000 workhours per year by eliminating the requirement that carriers file a notice of the creation and termination of agency agreements with the Commission.

The new rules also would eliminate the requirements that (1) carriers obtain signed receipts from shippers stating that they have received certain pre-move information; and (2) more than one weight ticket be completed when both the tare and gross weighings are conducted on the same scale. While we are unable to estimate precisely the workhour savings that might be derived from these two changes, they will allow carriers to reduce paperwork.

In addition, the new rules would: (1) remove the prohibition against discounts and rates based on pre-payment of charges; (2) remove the requirement that an agent and principal carrier maintain the same rates for the same service; (3) permit the establishment of two or more levels of rates for transportation between the same two points; (4) permit the selling of transit cargo liability insurance to individual shippers; and (5) permit the use of charge card plans to pay for the transportation service without prior Commission approval. The rule should promote rate and service innovations, thereby increasing competition. Even though the rules have not yet become effective, some carriers are already offering rate and service innovations in anticipation of the new rules.

Section 6 of the Act reaffirmed the Commission's authority to issue regulations to protect individual shippers. To meet this objective, the new rules require that: (1) improved, easy to read pre-move information be distributed to inform shippers of their rights and responsibilities; (2) shippers be fully and accurately informed of the existence and use of claims dispute resolution programs; (3) all carriers establish specific customer complaint and inquiry handling programs; (4) shippers be permitted to observe any weighing of a shipment; (5) shippers be notified of impending service delays; and (6) carriers continue to permit shippers to gain delivery of a shipment upon payment of 110 percent of the estimated charges when the shipment moves on a non-binding estimate, and to have at least 30 days to pay any balance due.

Section 6 also permits the Commission to establish performance standards for regulations designed to protect individual shippers. A rulemaking proceeding in Ex Parte No. MC-19 (Sub-No. 36A), Practices of Motor Common Carriers of Household Goods (Performance Standards), now pending before the Commission, proposes performance standards in areas of industry operation dealing with estimating practices, reasonable dispatch requirements, and the handling of claims for loss, damage, or delay. The Commission plans to use random sampling techniques to review carrier compliance with these standards after they are in final form.

Pursuant to Section 7 of the Act, the Commission on April 28, 1981, adopted a final policy statement concerning dispute resolution in Ex Parte No. MC-19 (Sub-No. 37), Claim Dispute Settlement Programs for Household Goods Carriers. Under this policy we will evaluate proposed programs to make certain they resolve shipper disputes fairly, expeditiously, and inexpensively. If, after notice and opportunity for hearing, the Commission finds the proposed program fails to meet the Act's requirements, we will withhold approval of the program. The Commission, however, did not outline specific dispute settlement program regulations because the Act clearly set out detailed requirements as to what these programs should include. We have already approved the programs proposed by the Mover's and Warehouseman's Association of America and the American Movers Conference, both of which give shippers the option to submit claims to arbitration by the American Arbitration Association. We believe that with the implementation of acceptable settlement dispute programs fewer shippers will have complaints and Commission involvement in some claim dispute matters will abate.

The provisions of the Household Goods Transportation Act established various new price and service options which should have a beneficial impact on the industry and shippers. Section 4 allows carriers to offer rates based on binding estimates and to include penalty provisions for failure to meet guaranteed pickup and delivery dates on transportation subject to the jurisdiction of the Commission. Ten of the major carriers have already instituted binding estimates; two of these carriers offer the shipper the benefit of the binding estimate price or the actual weight-based price, whichever is lower. Four of the major carriers have a form of guaranteed service option, some of which include a "failure to perform" allowance, where, on shipments weighing 2000 pounds or more, they will be liable for up to $100 for each day of delay beyond the delivery time indicated on the order for service.

Complaints have declined since passage of the Act,[1] but in light of a decrease in tonnage carried, and a concomitant overavailability of equipment, we cannot determine what part of this drop is due to enactment of the Act. However, since a large percentage of consumer complaints relate to underestimation of moving charges or extended delivery delays, we believe this section of the Act will clearly have a positive impact on shipper-carrier relations.

While the statute specifically allows binding estimates and guaranteed service dates, it does not preclude carriers from implementing other innovative rates or practices. Carriers have taken advantage of this flexibility and that afforded by the

[1] As indicated in the Appendix, total complaints declined from 1,092 in January 1981 to 973 for September of this year.

Motor Carrier Act of 1980 to develop new programs. For example, a number of major carriers now offer current value or full replacement liability protection plans.

The household goods industry is heavily dependent on agents rather than direct company employees to handle actual transportation operations. For the first time, Section 5 of the Act gives the Commission explicit authority to proceed directly against dishonest or unfit agents where the principal carriers have been unwilling or unable to curb them. In accordance with Congressional intent, the Commission will continue to hold the carriers primarily responsible for the acts of their agents. We expect each carrier to engage in self-policing of its agents and we will not hesitate to seek redress and compliance from a carrier for the acts of its agents. Nevertheless, the added authority gives the Commission a powerful enforcement tool in that it allows the Commission to move directly against household goods agents. At this time, the Commission does not see a need to step up investigation of agents and their activities. Rather, as stated in our October 14, 1980 policy statement and in answer to industry inquiries, we will continue to rely primarily on consumer complaints and compliance monitoring programs to direct investigation and policing efforts.

It is still too early to determine the overall effect of the Act on the household goods industry and its shippers. We expect, however, that it will be extremely beneficial. As mandated by Congress, the Commission has moved expeditiously to implement rules and issue policy statements which we believe carefully balance carrier and consumer interests. We have significantly decreased paperwork and unnecessary regulation, while maintaining shipper protection. We expect, therefore, that the Household Goods Transportation Act of 1980 will help eliminate industry abuses and provide a safe, stable and financially sound household goods transportation system.

Finally, available information suggests that the overall financial condition of the industry has improved somewhat in the last 18 months. Although tonnage is down, based on data for the first six months of this year, we estimate that household goods carriers will have total revenues of $1,765,606 for 1981, an increase of 5.3 percent over 1980 and 29.1 percent over 1979. Average revenue per ton has also increased, and the operating ratios of the major carriers generally reflect a more profitable operation. In sum, the financial status of the industry appears to have improved since passage of the legislation.

This concludes my remarks, and at this time I will be happy to try to answer any questions that you may have.

HOUSEHOLD GOODS COMPLAINTS

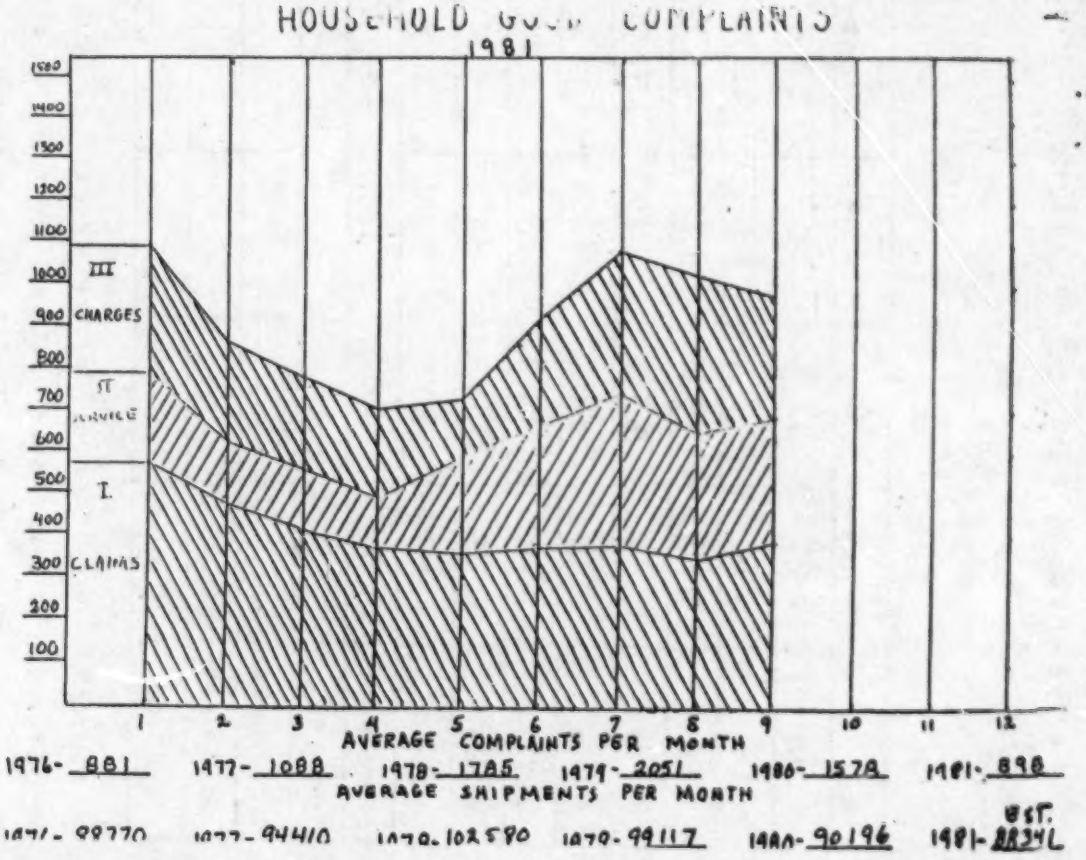
1981

	TOTAL COMPLAINTS	I CLAIMS	II SERVICE	III CHARGES
JANUARY	1092	52%	20%	28%
FEBRUARY	849	54%	18%	28%
MARCH	774	53%	19%	28%
APRIL	698	53%	17%	30%
MAY	710	50%	32%	18%
JUNE	912	40%	33%	27%
JULY	1075	34%	35%	31%
AUGUST	1003	37%	32%	31%
SEPTEMBER	973	40%	31%	29%
OCTOBER				
NOVEMBER				
DECEMBER				
TOTALS				

I - ALL COMPLAINTS RELATING TO THE PROCESSING AND DISPOSITION OF LOSS, DAMAGE, DELAY AND OVERCHARGE CLAIMS.

II - ALL COMPLAINTS RELATING TO SERVICE, INCLUDING DELAYS AND FAILURE TO PROVIDE AS AGREED OR REQUIRED.

III - ALL COMPLAINTS RELATING TO RATES, CHARGES, ESTIMATES AND WEIGHT.


HOUSEHOLD GOOD COMPLAINTS
1981
1500
1400
1300
1200
1100
1000
900
800
700
600
500
400
300
200
100
III
CHARGES
II
SERVICE
I.
CLAIMS
1
2
3
4
5
6
7
8
9
10
11
12
AVERAGE COMPLAINTS PER MONTH
1976- 881
1977- 1088
1978- 1785
1979- 2051
1980- 1578
1981- 898
AVERAGE SHIPMENTS PER MONTH
1976- 99770
1977- 94410
1978- 102580
1979- 99117
1980- 90196
1981- EST. 88346

Senator DANFORTH. Next we have a panel comprised of:

The National Moving & Storage Association—Thomas R. Collins, Jr.; Dr. T. Peter Ruane; and Matthew M. Smith, Jr.; and also Roscoe Conklin of the National Institute of Certified Moving Consultants.

STATEMENTS OF THOMAS R. COLLINS, JR., CHAIRMAN OF THE BOARD, NATIONAL MOVING & STORAGE ASSOCIATION, ACCOMPANIED BY DR. T. PETER RUANE, PRESIDENT; MATTHEW M. SMITH, JR., CHAIRMAN, MILITARY AFFAIRS COMMITTEE; AND ROSCOE CONKLIN, MEMBER, NATIONAL INSTITUTE OF CERTIFIED MOVING CONSULTANTS

Dr. RUANE. Good morning, Mr. Chairman.

Senator DANFORTH. Could each of you, if you would, identify yourselves for the record so that the stenographer will know who is who?

Dr. RUANE. My name is Pete Ruane. I am president of the National Moving & Storage Association.

Mr. COLLINS. Thomas R. Collins, Jr., chairman of the board of the National Moving & Storage Association, Alexandria, Va.

Mr. SMITH. Matthew M. Smith, Jr., chairman of the military affairs committee, NMSA.

Mr. CONKLIN. Roscoe F. Conklin, member of the Certified Moving Consultants.

Dr. RUANE. Mr. Chairman, the approach we'd like to take is, I'd like to briefly summarize the statement that the National Moving & Storage Association has submitted for the committee's use, and then our chairman of the board, Mr. Collins and Mr. Smith would like to individually address two of the issues that are in the statement itself, and Mr. Conklin will address some separate issues relative to the role of moving consultants.

First, Mr. Chairman, I'd like to thank you for the opportunity to again reappear before this committee and comment on the now enacted Household Goods Transportation Act, how the ICC has implemented this act, and various trends that are emerging in our industry. First, I should like to point out that the members of our association are primarily small businesses, family home businesses, who are principally agents of many of the national van lines in the country, although many of them have their own interstate operating authority.

As stated in our testimony in June before the House Public Works Committee during their oversight hearings, we expressed some very serious concern about the method of implementation that the ICC has utilized to draw up the new rules, and also the substance of several of the rules. Our concerns remain, although we do not intend to comment at length today about those rules since our comments were provided earlier, and I understand this committee and your staff has reviewed those comments provided in June.

I think it's important to set the stage for the current environment that our industry is operating in. In our judgment, this environment is marked by a couple of characteristics, the first of which is a growing state of confusion both among the industry and the consumer, primarily brought about by very rapid change. And

second, contrary to the statements made by the honorable Chairman of the ICC, we believe the financial situation of our industry is clearly on a downswing. We feel there is a declining market for certain moving services, and there is a potential economic disaster for the small moving companies primarily as a result of the very high interest rates and the spectre of a general recession that faces the economy. In fact, we believe it's imperative that the committee and the ICC be very sensitive to this situation in the drafting of any new regulations or the actual implementation of the new act.

Third, we would like to point out a reality relative to certain practices in the industry today; specifically, the offering of volume rates by a number of companies that, in our judgment, we feel this gives the potential for undue harm for the agent because of his loss of revenue in such transactions, and gives an unfair advantage to large shippers versus the small shippers, particularly the COD consumer.

Next, we would like to underscore, and Mr. Smith will comment on this later on, the fact that several Federal agencies, principally the Department of the Air Force, has been very insensitive to the intent of Congress relative to the Household Goods Act and in fact has neglected to carry out that intent, and even neglected to honor some very basic courtesies in developing policy.

And last, we would like to point out for the record our concern for some related legislation that is not directly connected to the Household Goods Act, but principally the Multi-Employer Pension Plan Amendments Act, part of ARISA, and the slow payments bill that the chairman has cosponsored himself. We would like to wholeheartedly support that latter bill, the slow pay bill, in the record today. We feel the above factors provide a compelling argument for a very sensitive and clear administration of the new laws and the ensuing regulations. It's clear to us that any additional paperwork and burden only exacerbate the existing problems for the industry.

So, in summary, our intent today is to alert this committee to the economic and operational problems of the industry, and we have used a number of examples in the actual statement to make our points. Second, to direct congressional attention to some inequities in marketing practices that we feel exist. Third, to seek directly this committee's intervention in the cited Air Force contract problem. And fourth, to underscore the adverse impact of the Multi-Employer Pension Plan Amendments Act and to again wholeheartedly support that slow pay legislation. In fact, Mr. Chairman, I think you'll find our statement of considerable interest where we cite an example of a Missouri firm that has, over the last 17 months, lost over $100,000 because of the Federal Government's failure to pay its debts on time.

A final note, Mr. Chairman, which Mr. Collins is going to amplify on, is that we feel that the existing policy development process in the ICC fails to give adequate opportunities for the industry to consult prior to actual listing of new proposals in the Federal Register or any other formal process. In fact, we're recommending to this committee that you consider the establishment of a national moving and storage advisory committee to insure the development of a better and more reasonable method of developing policy. In

fact, we feel that not to consider that seriously would be a serious mistake.

I know you would like to have Mr. Collins elaborate on that advisory committee idea first, Mr. Chairman.

Mr. COLLINS. Thank you. Mr. Chairman, I would like to say that to me this is a very, very important thing to be considered by the Congress. Last June when we met with Chairman Taylor it was like a breath of spring to be in his office with Bob Shepherd, Pete Ruane, myself, and Bob Tull to talk about problems that affected the operation of his office as well as impacting upon our industry. And while it may seem hopelessly naive in this sophisticated world to expect that we could either get away from the adversary posture that has existed for so many years, starting at least from my viewpoint last year, and I believe Mr. Taylor felt the same way, there does seem to be an opportunity here where we could sit down and discuss problems that face his office in the proper discharge of their duties, and we in turn would be honest, I hope, honest enough as an industry to recognize some of our errors, so that together we might not have to react to edicts from the ICC or from the Government, but really would have a chance to give and take honestly so that the resulting legislation would be mutually beneficial to the consumer.

The problem that's existed for the 25 or 30 years I've been in the business is that we have the ICC on one side, the industry on the other, and rarely do we get into any meaningful discussions about the problems that they face. For example, if there is a problem on claims control or claims settlement, if we knew up front that this was a continuing problem and a real irritant to the Commission or to Ms. Knauer's staff, wouldn't we be wise to be advised of that in an informal session where we could discuss the impact of new legislation that would surround something of this nature?

As I say, I think it's a terribly important thing in time. We're also mixed up with the sophistication of Government and its largeness today. We forget the personal aspects of it. I, for one, was delighted to have the opportunity to be with Mr. Taylor. We had gone up for what we thought would be 10 minutes. Thanks to his generosity, we were there almost an hour and a half. He and Bob Shepherd were extremely generous to us in time, but more than that, Mr. Chairman, I had the understanding that they were listening to us.

Now, we may not agree on a course of action, but up until this point in time, at least I have felt that it's a sort of charade. We sort of go through the motions, but nobody ever hears what anyone else is saying. In this particular instance, I was delighted, if nothing ever came out of that. I was very proud of that opportunity that had been granted us by Mr. Taylor to talk with him. He seemed to understand the problems that we face.

We are small business men and we get locked into the General Dynamics, the General Motors, the McDonnell Douglas syndrome, but we're small people and we need somebody with whom we can converse and who says yes, I recognize the problem. Well, let's look into it.

So I am hoping, even though the push in Government today is to reduce expenditures for committees of this nature, that it would be

given serious consideration and some further thought be given and we be consulted prior to the promulgation of rules that will give us an opportunity to at least be heard in an intelligent manner. And hopefully, and finally, we would be honest enough to recognize our own failings and hope that the Commission, on its side, would have the same feeling on those regulating our efforts.

Thank you, sir.

Mr. SMITH. Mr. Chairman, the military side of the house is one that I have been working in for many years. The Transportation Act, the Household Goods Transportation Act was designed with one thing in mind that was of really a blessing to a lot of small movers, and that is to reduce unnecessary paperwork. We have just experienced a situation with the Air Force where we have seen a contract referred to as a DPM or a packing crate contract for the movement of small household good shipments of the 300- to 500-pound category from one point to another within the United States, and also overseas. These shipments originally were moved under a contract of about 40 pages.

While we were working with the Air Force a couple of weeks ago, President Reagan was on TV and noted that they had just reduced a document from 45 pages to 6 pages for SBA, yet we have a document here last year of 40-some pages, and it's just been increased now to a document of over 200 pages to move a 300-pound shipment. We think it's ridiculous.

The Air Force had a test run but they have no results to be able to show us to say why the previous contract was wrong and what the evaluation of the new contract was. The Air Force has created two of the three problems within the moving and storage industry over the past couple of years. The real problems which just recently occurred, and now the DPM problem.

I see my time is up.

Senator DANFORTH. Thank you very much, gentlemen. Would it take an act of Congress to set up the sort of committee that you had in mind, or could it be done informally?

Mr. COLLINS. My best judgment would be it might be best done informally, to see how effective it might be. And if it proved to be worthwhile, Mr. Chairman, then it might be something they'd want to incorporate at a later date.

Senator DANFORTH. Are there any legal problems with doing it? I just haven't thought it out at all. Is there any problem with respect to Sunshine and so on?

Mr. COLLINS. I would certainly think that the sessions could be open. I realize there's a danger of people, so-called getting in bed together over legislation. I don't mean it in that sense at all. I'm thinking only from the exchange of ideas.

I might add one other thing that I failed to mention. That is, we had a similar experience with Virginia Knauer's office. They were interested in what we're doing as an organization, interested in this cooperative effort.

Dr. RUANE. Mr. Chairman, there are many other examples, models if you will, that other agencies use such a committee to develop policy. I don't think that would present any particular problem.

Senator DANFORTH. Do you want us to do anything about it? Could this be done by the industry itself and by the ICC?

Dr. RUANE. The benefit of a formal advisory committee is that it institutionalizes the communication process. That's one of the major reasons we suggested it. The results could be achieved without formal legislative action, and we would hope that the ICC would seriously entertain that suggestion.

Senator DANFORTH. But you are not asking the Congress, at least at this point, to do anything?

Dr. RUANE. No, sir, we're not. We are asking you to consider the value of that. And if, in your collective judgment, you see it as beneficial to so suggest to the ICC, we, of course, are independently suggesting it to that Commission.

Senator DANFORTH. Mr. Conklin, did you want to say—the time for the panel ran out, but I don't want to—I don't want you to feel that you have arrived in Washington and said nothing.

Mr. CONKLIN. I do appreciate that.

Just a few comments. You know, on the basis—I have a 1 on 1—on a daily basis—relationship with a lot of customers. I own a small moving and storage business, a family owned one. It's been in business since 1910. And through the third generation now we have gone on to growing within our business.

And I found that several aspects of the current act that has brought about on the local level—as an estimator, it takes at least twice as long, 100 percent more time, to explain. And then you are not even sure that you're explaining the full extent of the act, where the new rules and regulations I have here before me—the recent tariff that came out, there's 300 pages of exceptions to that tariff. It's incredible, the amount of changes—even among things we are talking about. There's been a significant difference within the act, along the lines of binding estimate.

Senator Schmitt mentioned about New Mexico. Some binding estimates can result in more than the actual costs would have using a weight basis, because it's just what it says, a binding estimate rather than what other carriers have, which is called a binding estimate, but in effect they still are using a weight basis, which is a guarantee not to exceed, in other words—because in weighing a shipment, if it is less, it will be the lower charges to the individual shipper.

I could go on and on about things that come up under the act—this full value or replacement cost coverage, there's three or four different ways of handling that. That becomes very confusing.

Senator DANFORTH. Would this require legislation? Should we start thinking about new legislation at this point, or is this a matter of just a shakedown cruise?

Mr. CONKLIN. I think it really depends on the implementation of the act. As it's been stated, it really hasn't been effective.

The Interstate Commerce Commission has their hands tied as far as any regulation or performance standards as of yet. So I think that's why the industry as a whole is a little bit hesitant on jumping into this very quickly, because particularly of the state of the economy.

Senator DANFORTH. At this point, your suggestion would be that the ICC—when it gets back in business, that the ICC be at least

knowledgeable about the kinds of problems that you are facing and try to make it as workable as possible?

Mr. CONKLIN. I think they are. I see some encouraging signs toward it happening in the future.

Senator DANFORTH. All right.

Well, thank you all very much.

Dr. RUANE. Thank you, Mr. Chairman.

[The statements follow:]

STATEMENT OF DR. T. PETER RUANE, PRESIDENT, NATIONAL MOVING & STORAGE ASSOCIATION

BACKGROUND

My name is Dr. T. Peter Ruane and I am President of the National Moving & Storage Association ("NMSA") in Alexandria Virginia. The National Moving & Storage Association, formerly the National Furniture Warehousemen's Association, is a non-profit trade association organized and existing under the General Not-For-Profit Corporation Act of the State of Illinois. Its offices are located at 124 South Royal Street, Alexandria, Virginia 22314.

NMSA was founded in 1920. It is the oldest and largest of the national trade associations of the household goods moving and storage industry ("industry"). Its membership consists of over 1,400 moving and storage companies located in communities throughout the United States and the World.

Almost all of NMSA's members serve as local moving agents for the large national van lines. Additionally, many NMSA members possess Interstate Commerce Commission ("ICC") authority to engage in the interstate transportation of household goods in their own right, without functioning under the umbrella of van line operating authority or affiliation. The vast majority of the Association's members are relatively small moving companies having only one or two commercial locations. Our recent membership survey indicates that approximately 80 percent of our members earn $1,500,000 or less. Nearly half of the membership, 43 percent, earns $500,000. Overall, NMSA membership is best characterized as representative of the small business component of the industry.

GENERAL STATEMENT

NMSA appreciates the opportunity to reappear before this Committee and present our views on the enacted Household Goods Transportation Act of 1980 ("HHGTA" or "Act"). Having been officially informed this Committee reviewed our statements presented during the House Public Works Committee Oversight Hearings on June 16, 1981, we will not reiterate in detail our major concerns previously expressed. Nonetheless, it is necessary to state that we still strongly adhere to those views, and must emphasize our concern with the manner in which the ICC has attempted to implement its proposed new rules and our disagreement with the substance of many of the proposed rules. Quite strongly, we respectfully submit again, that in many instances, the ICC both misread and misconstrued the underlying Congressional intent of the Act. Today, we wish to concentrate on several issues that reinforce our earlier statements, in addition to informing this Committee of serious problems that beset the nation's moving and storage industry, especially the small business component of this vital sector of our economy.

CURRENT BUSINESS CLIMATE; CONFUSION V. CLARITY

The new ICC rules governing the daily operations of the moving industry are suspended pending the outcome of litigation in the United States Court of Appeals for the 7th Circuit. As a result, the rules in effect, prior to implementation of the Act, guided the activities of this past summer peak moving season. Movers, however, were allowed to introduce new marketing and pricing strategies into the marketplace as a result of new options available from the Motor Carrier Act ("MCA") of 1980 and ICC policy changes. This new pricing and operational flexibility has, in part, benefited both the consumer and the industry alike.

On the other hand, the mesmerizing speed and novelty of the changes our industry is experiencing, and the helter-skelter fashion in which the ICC has implemented these changes, is creating confusion for customers, suppliers, and moving firms. For example, just keeping track of the daily rate/tariff changes has been a herculean task for small businesses in our industry. While NMSA generally favors the

increased competition and new marketing trust brought about by the HHGTA and the MCA, some negative and unforeseen results need to be highlighted. These dysfunctional elements stem from the poor national economy and the decreased demand for household goods moving services, further aggravated by astronomical interest rates, incongruent regulation, and lack of a visible and predictable policy direction from the ICC.

NMSA respectfully asserts these factors have resulted in confusion for the industry and the consumer, while increasing costs to the small mover having to cope with such drastic change occurring at a geometric rate. Of course, some of this disruption is to be expected by the very nature of legislative change, and movers realize that a shakedown period is likely to take place throughout our transition. Notwithstanding, it is necessary that this Committee, the ICC, and other regulatory bodies affecting motor carrier transportation maintain a realistic view of our industry and conduct remedial and regulatory activity accordingly.

PRESENT ECONOMIC STATE OF OUR INDUSTRY: A DOWNHILL TREND

The household goods moving industry is experiencing serious economic difficulty. This difficulty stems from the impact of deregulation, a decline in the need for most moving services, and the present state of our national economy.

In 1980, industry revenues exceeded $3 billion. Yet, 98 percent of these revenues were consumed by operating expenses. In 1979, 25 percent of the 124 largest moving companies maintained an operating ratio (cost÷revenue=operating ratio) above 100 percent, indicating the companies were operating in the red. This situation was not good, and little has changed in 1981.

In the first six months of the 1981 calendar year, 6 of the 17 largest moving firms operated at a loss. Among the companies earning $10 million or more, 45 percent of the companies had operating ratios above 100 percent, indicating operation in the red, once again. For Class II carriers (companies with revenues between $1 and $3 million) and Class III carriers (companies with revenues less than $1 million), the economic situation is equally depressed.

Compared to the first six months of 1980, revenues for Class II carriers in the first six months of 1981 are down 17.1 percent, while operating ratios have risen 2 percent. NMSA believes Class III carriers are experiencing the same difficulty. This belief is based on NMSA's ongoing contact with its members and a recent informal telephone survey, indicating that many small moving companies in the Washington, D.C. area are operating in the red. According to an ICC report, covering January-May 1981, industry revenues recently increased by 8.7 percent. Unfortunately, the Commission failed to explain that inflation was over 10 percent, thus indicating that revenues declined in terms of real dollars.

A significant factor in the declining economic state of our industry is the on-going shifts in the demand for moving services. As stated in the cover story in the July 27, 1981 edition of Business Week, we are truly encountering "America's New Immobile Society." According to Business Week, after a quarter-century in which 20 percent of the population changed addresses each year, only 17.7 percent of the population changed their address in 1976, and this figure is likely to continue declining throughout 1981. To add to this problem, corporate transfers, a key source of moving revenues, are also declining.

From 1979–1980, corporate expansion to new areas decreased by 12 percent. As expected, fewer corporate moves, in turn, reduced the number of corporate employee transfers, another key source of revenue for household goods movers. In 1978, 68 percent of major corporations surveyed moved less than 5 percent of their employees. In 1980, over 77 percent of these corporations moved less than 5 percent of their employees. With interest rates over 15 percent, the difficulty of selling and financing the purchase of a new home furthers reduction in the number of corporate employee transfers. Unfortunately, the prevailing high interest rates have squeezed the housing market to its lowest level of activity in 35 years. While storm clouds have gathered over the nation's housing industry for many months, they have now shifted over to local movers and the imminent drenching could wash away many smaller firms who do not possess the umbrella of business diversification, nor large operating reserves to offset business downturns.

Lastly, deregulation is allowing for rampant entry of inferior and unqualified movers who transport goods at less expensive rates than established carriers because of cost differentials. These "fly by night" companies, operating in an air of illegitimacy, are effectively undercutting the legitimate smaller firms, since their costs of regulatory compliance are virtually non-existent. As a result, the honest, smaller movers are forced to reduce rates below the level of economic sufficiency, in many cases, making bankruptcy for the small mover an unfortunate reality.

In light of the aforementioned assessment of our industry, NMSA respectfully request that greater consideration be given to the economic needs of household goods movers and that future legislation and regulation recognize the need to strengthen the financial base upon which our industry operates.

VOLUME DISCOUNTS: A RECOGNIZED INEQUITY

The Household Goods Transportation Act of 1980 does not contain any provisions dealing with rate bureaus, rate levels, ratemaking, and general entry requirements. Instead, the provisions of the Motor Carrier Act of 1980 apply to these and other areas excluded from the Household Goods Transportation Act. Nonetheless, the HHGTA is designed to provide a safe, stable, and financially sound household goods moving industry, and volume discounts permitted under the MCA directly thwart fulfillment of this legislative purpose.

NMSA realizes that volume discounts are designed to increase competition within the industry, while injecting innovation into transportation pricing. Further, NMSA recognizes that these discounts are not expressly prohibited by the Motor Carrier Act. However, by allowing such discounts, or any blanket discounts, the door is opened to discriminatory and predatory pricing, in addition to the potential bankruptcy of the small agent who is unable to financially compete with larger, national van lines.

By providing a guise for discriminatory and predatory rate setting, volume discounts allow larger movers to consistently and effectively underprice small movers, since the larger mover is financially stronger to absorb significant short-term loss in exchange for considerable long-term profit. If carried to an extreme by large national carriers with strong financial endownment and extensive operating facilities, such discounts will inevitably foster the very evil increased competition is designed to eliminate: localized dominance of a market by larger companies.

Furthermore, it has long been recognized that corporations, large commercial enterprises, and the military are consistent high volume users of household goods transportation services, and account for a significant portion of the industry's total revenues. Prior to the implementation of volume discounts, both agents and the national van lines equitably shared the commercial benefits of providing transportation services to these shippers, and agents effectively fulfilled their role as the nucleus of industry operations. However, with the advent of volume discounts, the agent is placed at a serious and economically unhealthy disadvantage.

First, agents, as small businessmen, are unable to offer truly competitive volume discounts, given the significant financial differential between agents and the national van lines. Additionally, since the van lines provide transportation services across a much broader geographic area than agents, agents are severely curtailed from offering relatively appealing pricing programs.

Second, the volume discounts offered by the national van lines require shippers to solicit transportation services from the same carrier, in order to qualify for the discount. Consequently, important large volume shippers, such as major corporations, are forced to forgo direct negotiations with the agent, and instead, must contract directly with the van line principals. Quite clearly, the instrumental role of the agent as the operational arm of the industry is severly threatened in this case. Further, the ability and opportunity of agents to perform transportation services under their own operating authorities is severely curtailed. In light of the intent of the HHGTA to foster a financially stable and sound household goods moving industry, such a result is hardly acceptable.

Additionally, volume discounts are discriminatory since they clearly favor large corporations and other high-volume accounts, while reducing the opportunity of individual homeowners (COD shippers) to receive the benefits of mandated pricing flexibility. Unquestionably, the individual homeowner, who is an important component of the consuming public, is placed at a distinct disadvantage.

This disadvantage results from the fact that individual homeowners are likely to move only once a year, if not once in every five years. Further, such shippers are not high-volume shippers, and are thus unlikely to be elegible for any discount based on volume. Even if some individual homeowners move a substantial volume of goods, assuming the carrier offers graduated volume-discounts on a sliding scale, the individual homeowner will only be eligible for the smallest discount.

Fortunately, the ICC recognized the negative consequences of volume discounts, and recently ordered 50 motor carrier rate bureaus and 63 individual trucking firms to cancel tariff provisions offering discount rates to individual shippers (Special Tariff Authority No. 82-0150). In final note, NMSA wholeheartedly supports the Commission in its efforts to maintain pricing equity, and appreciates their concern for the agent and the small businessman in this matter. NMSA therefore recom-

mends that all current and future volume rate plans be strictly scrutinized by the ICC and Congress, in a manner consistent with the tariff proceeding mentioned above.

MORE, NOT LESS, PAPERWORK

The Household Goods Transportation Act is designed to reduce unnecessary paperwork in the daily administration of moving services. Unfortunately, many administrative agencies and executive offices impacting upon motor carrier legislation have failed to adhere to the Act. A strong example of this mishap is the new format for DPM Contracts imposed by the United States Air Force. These contracts involve local drayage, as well as packing and crating.

This new format implements drastic changes, including a surveillance program, and sets a schedule of performance requirements, together with special penalties for deviations from a quality level. Whereas, previous contracts spanned approximately 50 pages, the new contract is roughly 200 pages—hardly a reduction in paperwork!

Of prime concern to the industry is the fact that this new procedure was presented by Air Force Procurement without consulting our industry! Bidders were asked to respond within a mere 30 days.

Initial examination of the contract has disclosed numerous technical flaws, which have been brought to the attention of Air Force Procurement. At this point, it should be noted that DPM Contracts are almost completely set aside for small business. The members of our industry involved with DPM are small businessmen. They are the local movers, warehousemen, and agents, not the 48-stat-authority-van lines. Their companies do not have resident staff contract experts capable of analyzing a new contract form of this magnitude on such short notice.

We have requested the Air Force to postpone implementation of the new contact until next year, to allow both the Air Force and the industry to resolve the flaws and areas of disagreement which exist. For the upcoming year, the old contract should be used to avoid increasing the paperwork burden, and to allow the new contract to be re-examined. The Air Force has rejected this request, and we now turn to this Committee for resolution of this matter.

Basically, the above burdens just cannot be borne by most small firms who are already troubled by the decrease in business and the overall economic problems previously mentioned. This committee's attention to this problem is appreciated.

RELATED ISSUES

Outside the Household Goods Transportation Act, many legislative and regulatory actions have a direct impact upon household goods moving. One such action is the chilling effect on business transactions of withdrawal liability imposed by the Multiemployer Pension Plan Ammendments Act (MPPAA). As noted in recent testimony before the U.S. Senate Small Business Subcommittee on Competition and Productivity, the effect of withdrawal liability can be devastating to the small businessman. Under Title 4 of ERISA, companies must guarantee all benefits, thus requiring the company to underwrite all the fund's neglect. Essentially, for companies maintaining union contracts and the duty to pay into a multi-employer pension fund, ERISA significantly thwarts sales, acquisitions, mergers, purchases, or the closing of a business. At the bottom line, attempting to earn more money results in spending more money. In light of the present economic state of our industry, this plan may very well be the death of the small mover.

Another recent development germane to household goods moving is the proposed Late Pay Bill (S–1131), an act obligating the government to pay its bills within 30 days, and if delinquent, requiring the government to pay interest on the later payment.

In light of the fact that many agents and small movers provide moving services for the government, this bill is a necessary remedy for the loss of on-hand cash produced by delinquent accounts.

The lack of available capital is not a matter to be taken lightly. For example, when one NMSA member in Missouri was forced to take out a loan to keep his business alive, due to unpaid bills ranking in tardiness from 30–210 days, he soon discovered that paying back the interest is enough to put him out of business. In this case, seven months of interest owed at the prime lending rate of 20 percent amounted to $100,000—a rather large sum for a small mover. Accordingly, NMSA strongly supports immediate adoption of the Late Payment Bill, and appreciates all efforts to remedy the negative impact of delinquent payment by the Federal Government.

One final development worthy of explanation is the Commission's proposed changes in leasing procedures between carriers and owner-operators contained in Ex Parte 43 (Sub. 13). For years, carriers and owner-operators have conducted contractual negotiations free of any governmental influence. Now, with the Commission's attempts to regulate these procedures, the right of contract between these parties is severely curtailed. Additionally, the regulations proposed by the Commission create unnecessary paperwork, an evil the HHGTA was designed to eliminate! Accordingly, NMSA respectfully submits that the Commission has over-extended its authority into an area inappropriate for federal regulation, while fostering detriments Congress intended to remove.

CONCLUSION

The Household Goods Transportation Act is a strong piece of legislation, aimed at improving the household goods moving industry, while enhancing transportation services to the consuming public. Throughout the Act, Congress identified specific goals, and it is absolutely essential that the ICC and other regulatory bodies recognize these goals and act accordingly.

Unquestionably, the regulatory process must develop a greater sensitivity to the needs of household goods movers, especially the small mover, striving for commercial success at the local level. To this end, development of a National Advisory Committee consisting of ICC policy makers, consumers, and members of the moving industry would ensure comprehensive recognition of the industry's needs, reduce the adversarial relationship between the industry and the ICC, and remove the formality and mystique of the Ex Parte regulatory process. The time has come for government and industry to work together in an environment of mutual understanding. With new policy leadership at the ICC, the time is ripe for a different and more constructive relationship between the moving industry and the Commission. In light of the Commission's recent budget cuts, implementation of a National Advisory Committee will reduce the expense of regulatory evaluation prior to publication in the Federal Register, while enhancing the Commission's ability to develop innovative, practical, and effective policy approaches.

STATEMENT OF ROSCOE F. CONKLIN, REPRESENTING THE NATIONAL INSTITUTE OF CERTIFIED MOVING CONSULTANTS

BACKGROUND

My name is Roscoe F. Conklin. I am a part-owner of a family owned business, Greenmount Moving and Storage, Inc. in Baltimore, Maryland. Our company holds Interstate Commerce Commission operating authority for 15 states and the District of Columbia and we are an agent for Wheaton Van Lines.

Personally I am highly involved in sales activity on behalf of my company and as an agent of Wheaton Van Lines.

I am an active member (since 1975) of the National Institute of Certified Moving Consultants and appear today representing that organization. The Institute is a non-profit organization, formed in 1974, whose major purpose is to provide training of household goods industry sales representatives, to certify their competency, and to elevate the status of our service to the public. I do not currently hold an office in the Institute, but it is felt that my day to day dealings with consumers is typical of the experiences of the approximately 2,000 members of the National Institute of Certified Moving Consultants.

GENERAL STATEMENT

As a sales-oriented person, I generally welcomed the atmosphere of competitive freedom which the Household Goods Transportation Act appeared to set forth. However, the manner in which the legislation has been implemented even to this date, has created a situation of general confusion, which in many cases I am sure is not beneficial to the general public. Some of this confusion is a natural fall out of changes intended by the legislation, but I suspect that some of the negative effects of implementation could have been avoided if industry opinions had been given more consideration.

As a professional representing my company and indeed an industry it is my obligation to provide potential customers with proper information regarding rules, regulations, operating procedures and options available to them. With the vast number of changes that have been allowed recently, it is almost impossible for anyone to be completely informed about the industry. For example, the Household

Goods Carriers Bureau, a major tariff bureau for the industry, recently published an Exceptions Tariff listing individual carrier exceptions to a general tariff. This exceptions list has over 300 pages!

It is my experience that "estimates", that is, consultation with potential customers now takes much longer (perhaps twice as long) as previously, primarily because of explanations required of the voluminous deviations from general tariff applications. In addition, customers today ask for a greater number of estimates. I realize a customer may want to "shop", but when an individual requests 10–12 different companies to provide estimates involving an hour plus each, the cost to industry borders on the ridiculous. The public eventually must absorb this cost.

The binding estimate does not benefit the public as much as it might appear. I believe that in many instances, the binding price is higher than that which would be developed by an applicable weight/mileage tariff. Does the ICC know whether this is true of not?

I have a concern that rates are going to be used to unjustly discriminate against certain categories of customers. As an example, a rate structure could be developed by a carrier that would attract traffic between major population centers and discourage traffic from suburban or remote points. As an industry, we have a responsibility to assist people to move where they wish. It is hoped that there are proper safeguards in place to prevent the development of a "small lot" problem in the household goods industry.

Senator DANFORTH. The next witness is Mr. Ward Scull, Mayflower Warehousemen's Association.

STATEMENT OF WARD SCULL, MAYFLOWER WAREHOUSEMEN'S ASSOCIATION, ACCOMPANIED BY TOM STEPHENS, STAFF DIRECTOR

Mr. SCULL. Good morning, sir. I'm Ward Scull, with Virginia Transfer & Storage Co., in Newport News, Va., representing the Mayflower Warehousemen's Association this morning.

I have with me, Mr. Tom Stephens, who is our staff director of the Mayflower Warehousemen's Association in Indianapolis, Ind.

I serve on the board of directors of the Mayflower Warehousemen's Association, and I am also chairman of its Committee on Government and Industry.

Our association is comprised of 650 members who are franchised agents for the Aero Mayflower Transit Co.. Membership in our association is on a voluntary basis. The purposes and objectives of our association include: "To act, suggest, and assist on behalf of its members concerning rules and regulations before State and Federal agencies." We strongly believe the moving public should be served on a fair and equitable basis, commensurate with the laws of this country.

Most of our businesses—most of our member/agents are small, independent businessmen. We are the ones who actually perform the services, including the estimating, packing, loading, moving, unloading, and unpacking. We are there on the firing line, or so to speak, in the trenches. Even though the Commission implements the rules and regulations directed at carriers, we are the ones that are actually there doing the work.

We support the intent of the law of increased competition, reduced paperwork, and reduced regulation. We support you in these oversight hearings to see that this intent is carried out. The goals of increased competition and reduced paperwork are surely something we all need. It has just gotten to be a situation over the last 10 years of just more and more paperwork that we're having to fill out and complete—it's a tremendous burden on the limited personnel within our agencies.

The final rules are not in effect, as we've already heard this morning, and we believe, to some degree, that regulations and paperwork have been reduced. However, we think further steps can be achieved in that arena, and we believe that this can best be done by cooperation between the industry and the Commission.

One point that we would like to leave with you this morning is that we need to seek the true congressional intent of the act, and as you gentlemen continue to review and have hearings such as this, we'll have the opportunity to assist in this endeavor. We feel, as an integral part of this industry, that the industry, regulatory bodies, and the consumer groups will be able to come closer together to do what needs to be done to further the interests of the consuming public in having an efficient industry that's going to be there to serve in the future.

We find out there in the marketplace, at this time, that the act is working. The competitive forces are at work and there is increased competition; no question about it. We are concerned, as small businessmen/agents, as to where that's going to lead us because we see some actions being taken where the agents have no authority or control over the decisions being made by the carriers that will affect dramatically upon the profit and losses of the individual agents. The agents are going to need to become more productive and more proficient in what they can do; and they're striving to do that now.

We strongly believe the regulations need to be further reduced, and any steps we can take toward that goal now will assure the moving public of a strong and competitive industry in the future.

We thank you for the opportunity to appear before you today. Our written statement is before you, and we appreciate your giving us the opportunity to express some of our concerns.

Senator DANFORTH. Thank you very much, Mr. Scull. We appreciate your testimony.

[The statement follows:]

STATEMENT OF WARD R. SCULL, MAYFLOWER WAREHOUSEMEN'S ASSOCIATION

INTRODUCTION

My name is Ward Scull and I am President of Virginia Transfer and Storage Company in Newport News, Virginia.

I appear before you today on behalf of the Mayflower Warehousemen's Association (hereinafter referred to as MWA), as a member of its Board of Directors and Chairman of its Committee on Government and Industry.

MWA is an Indiana Not-for-Profit Corporation with its principal and only office located at 9247 North Meridian Street, Suite 120, Indianapolis, Indiana 46260. The more than 650 members of MWA are agents of the Aero Mayflower Transit Company and are classified as "small business" by the United States Government.

Our members have a real and vital interest in these hearings and any other matters promulgated from the Housing Goods Transportation Act of 1980 (hereinafter referred to as Act). We are the companies who actually perform most services in connection with the transportation of household goods and also the ones who must comply with the rules and regulations governing this industry.

The operating rules as proposed by the Interstate Commerce Commission (hereinafter referred to as ICC) are currently under attach in the Courts and final rules regarding performance standards have not yet been issued by the ICC. Since these rules are not in effect, we suggest this hearing today may be premature, but appreciate the zeal in which this Committee has followed the Act thus far. We request this Committee continue to closely monitor the ICC after all operating and performance rules are in place.

We continue to subscribe to the view that the intent of Congress prevail in all matters relating to the Act. Should the rules adopted by the ICC be upheld by the Courts, MWA believes this Committee is obligated to conduct a hearing at an appropriate time thereafter for the express purpose of determining compliance to these specific mandates of simplification of rules and reduction of paperwork.

Under the Act, the ICC was given a new responsibility regarding compliance of its' provisions by agents of household goods carriers. MWA believes the accompanying Report to the Act if vividly clear and we would further request this Committee carefully track this provision to assure that agents are being regulated within the scope intended by Congress.

Like our colleagues in the airline industry, we are experiencing great confusion in the quotation of rates on what seems to be a day to day basis. It is not unusual to see rate increases, decreases and lateral changes occurring within a twenty-four hour period. These frequent and rapid changes have placed extraordinary burdens upon the administrative staff of a small businessman/agent. Furthermore, in larger population centers having representation by a number of agents, seldom, if ever, can a consumer obtain a correct rate with any degree of consistency. MWA believes this matter should also be closely observed by this Committee in the future.

If indeed, the intent of Congress were to increase competition and reduce regulation and paperwork for the moving industry, then these goals should be first and foremost in the minds of this Committee over the next few months.

In this connection, the Mayflower Warehousemen's Association pledges its cooperation and support towards this end, so that the greater goal of improved service to the shipping public be achieved.

Senator DANFORTH. The next witness is Mr. Sidney Epstein, chairman of the board, Household Goods Carriers' Bureau.

STATEMENT OF SIDNEY EPSTEIN, CHAIRMAN OF THE BOARD, HOUSEHOLD GOODS CARRIERS' BUREAU, ACCOMPANIED BY THOMAS AUCHINCLOSS, GENERAL COUNSEL, HOUSEHOLD MOVERS CARRIERS' BUREAU; FRANCIS L. WYCHE, IMMEDIATE PAST PRESIDENT, HOUSEHOLD MOVERS CARRIERS' BUREAU; AND JOSEPH HARRISON, PRESIDENT, HOUSEHOLDER CARRIERS' BUREAU

Mr. EPSTEIN. Mr. Chairman, may I introduce, on my right, Mr. Thomas Auchincloss, who is general counsel of the Household Movers Carriers' Bureau.

On my immediate left, Mr. Francis L. Wyche, who is the immediate past president of the bureau.

And Mr. Joseph Harrison, president of the Householder Carriers' Bureau.

My name is Sidney Epstein. I am president of Allied Van Lines, Inc., of Broadview, Ill. I am appearing this morning on behalf of the Household Goods Carriers' Bureau, Inc., principal ratemaking organization of household good carriers. And I'm chairman of the board of that organization.

I have prepared a statement which I would ask be included in the record of these hearings, copies of which have been made available to the staff.

My statement addressed five major topics. Two have to do with the Commission's Ex Parte MC-19, Sub-36, proceeding, involving the complete revamping of regulations applicable to household goods carriers.

A third deals with binding estimates; a fourth with a Commission-mandated fuel payment. And the final deals with the implementation of section 14 of the Motor Carrier Act of 1980, relating to the operations of rate bureaus.

Each subject is covered at length in my statement, and I would urge the committee and its staff to carefully consider the points that I have raised.

By way of summary, the Commission proposes the cancellation of two rules which are of long standing, and in many ways the cornerstone of the nondiscriminatory, nonpredatory rates and charges our industry assesses for the services we perform.

One rule prohibits agent/carriers from maintaining rates or charges which are different than those maintained by their principal carriers, usually a van line.

The second prohibits any household goods carrier from maintaining what amounts to multiple rate levels, some applicable via whatever joint carrier arrangement may be made with other carriers, and another level of rates applicable via their single service.

Both rules emanate from formal Commission proceedings in which lengthy deliberations transpired and reasoned conclusions were reached that the rules were necessary in order to protect the public from unscrupulous carrier ratemaking practices.

As the president of a major van line and, of course, as the chairman of the board of the industry's principal ratemaking organization, I am seriously concerned that cancellation of these rules will, in time, give my industry a black eye like it has never before experienced.

We simply cannot tolerate situations in which the public is without reasonable means to determine applicable rates and charges, nor can we live with the eventual certainty that unscrupulous carriers will take advanatage of consumer shippers by assessing rates which reflect "what the traffic will bear."

The Commission would have the public and Congress believe that both of these rules are being canceled to promote competition in keeping with the mandate of the new legislation.

As my prepared statement says:

> We cannot disagree more. We have absolutely no quarrel with the matter of increase price and service competition in our industry, but we most vigorously oppose any form of destructive rate competition which will have the effect of giving the industry a reputation for "double dealing" ratemaking and a disregard for consumer interests.

That, in our view, will most certainly be the result of the Commission's action.

If your staff will review the two formal Commission proceedings referred to in my statement, you will find that it was precisely these sorts of practices which led the ICC to promulgate the two rules I refer to. Those decisions recall many situations in which abusive carrier ratemaking practices directed to the consuming public were being engaged by household goods carriers.

Had my industry realized that the Commission would be intent upon complete destruction of our ratemaking cornerstones after enactment of the 1980 legislation, we would have asked Congress to create statutory provisions within the Interstate Commerce Act which would embody the specific prohibitions now contained in the two ICC regulations.

We simply did not anticipate that the ICC would undertake a program designed to promote destructive carrier ratemaking. The Commission's action in proposing cancellation of both of these rules

must be attributed to either a total disregard of congressional intent or a lack of understanding of the ratemaking practices in this industry.

The bottom line, notwithstanding the motive, is to deregulate the ratemaking engaged in by my industry by administrative fiat.

The third subject treated in my statement deals with binding estimates. Of course the new legislation permits carriers to offer binding estimates and prohibits the ICC from setting any formulae, establishing forms or procedures for the rendering of such estimates.

We have advised the Commission that its regulation is fine as far as it goes, but that the Commission has failed to conform its regulation to clear statutory language. What I refer to is the requirement of section 10734 of the new act, which requires carriers who offer binding estimates to conform to the tariff requirements of section 10762 of the act.

I have great difficulty in understanding the Commission's complete failure to observe, even in a loose, ministerial fashion, the requirement Congress set in the new law. It seems perfectly obvious to me that Congress meant something when it said that the tariff filing and posting requirements expressed in section 10762 of the act must be given force in the case of carrier binding estimates.

The Commission has done absolutely nothing to implement this requirement. What this means is that there is absolutely no way to ascertain whether or not the rates, charges and total transportation costs assessed for the movement of household goods are or are not nonpreferential and nonpredatory, as Congress mandated.

My statement uses the illustration of a major national account shipper who would suspect that a vanline, through its finding estimate program, is subjecting its traffic to preferential or predatory treatment.

The scheme of regulation which has evolved from the Commission simply will not permit a determination as to whether or not that is the case. This is the plight of the national account shipper who finds himself in that situation, and most certainly I view that seriously.

However, imagine for a moment, as my statement says, the plight of the individual consumer or consumer group who would undertake the task of determining whether or not carrier-binding-estimate ratemaking practices are or are not preferential or predatory. Such a task undertaken by these individuals will be an absolute impossibility.

In this same vein, I have knowledge which leads me to conclude that carriers are engaged in practices emanating from the binding estimate legislation and absence of Commission tariff filing requirements which, in fact, is costing the public much more than it should pay for the transportation it buys.

Apparently there is significant merit in the position my industry has taken in opposition to the Commission decision in Ex Parte No. MC–19, Sub–36, since the U.S. Court of Appeals, Seventh Circuit, stayed the effective date of that decision on July 7, 1981, and that stay remains in effect today.

I would also like to call the committee's attention to an action which presents a most alarming situation to household goods carri-

ers. I refer to the Commission order served October 8, 1981, in Ex Parte 311, Sub-4, titled "Modification of the Motor Carrier Fuel Surcharge Program," an administratively final decision which mandates the payment of a mileage-based fuel payment to a large segment of the labor force, owner-operators, who are utilized by household goods carriers.

While the Household Goods Transporation Act of 1980 expressly states an intention to provide household goods carriers with maximum flexibility in the pricing of their services, the Commission in Ex Parte 311, Sub-4, mandates a mileage-based fuel payment to owner-operators that will initially cost my industry in the neighborhood of $150 million.

Thus, from the very outset, any rates proposed by carriers individually or through their collective process must account for an expenditure of this magnitude. This is not rate flexibility.

The final point made in my statement, Mr. Chairman, deals with section 14 of the Motor Carrier Act and the regulations the Commission has imposed upon the operations of rate bureaus. There is no question in my mind but that those regulations are unnecessary since the mandate of Congress expressed in section 14 is perfectly clear and most certainly did not require the complex, burdensome set of regulations the Commission has prescribed upon all such organizations.

Mr. Chairman, I will be glad to answer any questions you may have.

Senator DANFORTH. It's my understanding that with respect to the binding estimates that the act provides that carriers may or may not, they have the discretion whether or not they are going to provide the estimates.

Mr. EPSTEIN. Yes, sir.

Senator DANFORTH. Is that your understanding also?

Mr. EPSTEIN. Yes.

Senator DANFORTH. And it's also my understanding that the Commission has the power tc prohibit any particular estimating practice that is deceptive; is that your understanding also?

Mr. EPSTEIN. That is correct, Mr. Chairman. I guess the point we're making is yes, the Commission does have that power, but it's done absolutely nothing to provide any guidelines, any regulation or any rules as they pertain to binding estimates. And as a consequence, many carriers, myself included, have filed binding estimate provisions in their tariffs that really comply with no existing rule or regulations, which may not be very important, but most importantly, there is no way for the individual consumer or any shipper for that matter, who utilizes a binding estimate, to ever have the ability to check it to see whether or not it was either preferential on the one hand or predatory on the other.

And that's the point we make this morning, that there is just freewheeling out there as it concerns the binding estimates.

Senator DANFORTH. But isn't that normal? I mean, for example, any kind of pricing—I would assume without the Interstate Commerce Act it would—predatory pricing would be a violation of antitrust law. Isn't it typical that predatory practices are ones which are defined not by a detailed set of regulations but by actual practice in the marketplace over a period of time?

Mr. EPSTEIN. Yes. The point is, Mr. Chairman, it would probably take hours to go through in detail here this morning, but the point is that the act prohibits predatory or preferential pricing schemes, and we, in fact, have that type of scheme allegedly out in the public today. There being, however, no rules on our mechanism by which to check them. There's no way to check it out. I could give you a binding estimate today and move you, and there would be no responsibility on my part to maintain any record in my file or any bit of paper that would permit you or any other shipper to come back later on, or the Commission, to look and see whether or not you were fairly treated. It just doesn't exist.

And I guess—you know, we also go along with the cliche who says "Those who ignore history are doomed to relive it." I don't like to admit to my age, but back when I was a boy, one of the very reasons that brought about regulation in the household goods industry was the fact that there prevailed what we called at that time flat rate moving, which is absolutely identical to binding estimates, and that the impact on consumers required that the Commission regulate the ratemaking practices of this industry.

And the same thing is happening today.

Senator DANFORTH. Give me a for instance. How do you fear or how do you think it's working?

Mr. EPSTEIN. Well, we know for a fact——

Senator DANFORTH. I want to move from Washington to St. Louis.

It's a hypothetical question.

Mr. EPSTEIN. My experience tells me, were you to try to arrange that binding estimate in order to move during the last week of June or the first week or two in July, or the last of July, the first part of August, and you were to ask me or one of my fellows in the industry for a binding estimate at that time, the price given to you would probably be in the neighborhood of 30 to 40 percent higher than what the normal tariff would be. The fact of the matter is that's what the traffic will bear at that given period.

Senator DANFORTH. What's wrong with that? Let's suppose I want to make the move and I call up your van line and say how much will it cost? I want an estimate and you give me an estimate, and it's fat. Then I go to someone else and say how much will it cost, and he gives me his estimate. What's wrong with that?

Mr. EPSTEIN. You may find nothing wrong with that theoretically; however, it flies in the face of the law which requires that we provide transportation services to all in this country at rates that are neither predatory nor preferential, but that are equally established to all who come to use our service. And you know, if we are to eliminate that part of the law completely and say everybody's on his own, then you have a different situation.

The point is, we have an industry. I believe that it is at least a quasi-utility, and that people don't have much choice except to use them, and that there has to be some way to make certain they're fairly treated.

Senator DANFORTH. You just disagree with the statute then?

Mr. EPSTEIN. I don't disagree with the statute at all. What I'm saying is that the Commission has not followed the language of the statute. The statute very clearly states that these rates shall nei-

ther be predatory nor preferential, and the Commission has not done anything to see that that part of the statute is enforced.

Senator DANFORTH. If a complaint is made to the Commission that so-and-so is engaged in predatory or deceptive practices, you're saying that such complaints have been made, and that the Commission has done nothing?

Mr. EPSTEIN. Mr. Chairman, what I'm saying is how would you know that such a practice existed? The public is not aware.

Senator DANFORTH. How would you know any pricing practice—I don't know under the antitrust laws. How do you know any pricing practice is predatory? People complain.

Mr. EPSTEIN. You have rates. You have tariffs. You have requirements in a tariff. You have rules that govern——

Senator DANFORTH. You don't either, not in the antitrust laws. You don't have rules as to the pricing of, say, tables or chairs or whatever people are selling.

Mr. EPSTEIN. Mr. Chairman, I can't comment, because I have no knowledge about the manufacture of chairs and tables and many other businesses. I do consider myself an expert in this field, having spent a lifetime in it. And I know where the statute requires that there not be a certain practice, it follows that there should be some method of measuring whether or not those practices exist, and there is none.

Senator DANFORTH. Maybe I'm missing something. That is not my understanding of the thrust of this statute. And it's not my understanding of general law with respect to predatory or deceptive practices. The notion is not to try to spell it out in extreme detail or set up a massive regulatory process, but to let the market forces operate under general principles of fairness.

Mr. EPSTEIN. Mr. Chairman, we're not asking any massive form of regulation be set up. We merely ask that the statute be followed, and as you touch on matters that are legal in nature, perhaps Mr. Auchincloss might give a sentence or two of how that reflects our opinion in legal terms.

Senator DANFORTH. Very briefly, though.

Mr. AUCHINCLOSS. Mr. Chairman, the Interstate Commerce continues in effect and continues the requirement that carrier rates be no more than just and reasonable. The new legislation, the Household Goods Transportation Act of 1980 embodies those same provisions but promotes competition between carriers. One of the forms of competition in the ratemaking area, at least, is the binding estimate. Carriers are free to provide binding estimates to shippers, and the requirement in the act itself is that these estimates shall be no more—shall not be predatory or nondiscriminatory—discriminatory. The act specifically requires carriers when offering binding estimates to conform to the tariff filing requirements of the Interstate Commerce Act.

All that means to the people we represent, and the seventh circuit has this argument before it now, is when you offer a binding estimate you keep some record of that, so that at some point in time if either the ICC, a consumer group, a group of shippers or a carrier, who might file a complaint against another carrier alleging the engaging in of predatory practices, there is something upon which a determination could be made.

The ICC's rules simply makes no such requirement. That's it in a nutshell.

Senator DANFORTH. OK. Thank you very much.

Mr. EPSTEIN. Thank you, sir.

[The statement follows:]

STATEMENT OF SIDNEY EPSTEIN, CHAIRMAN OF THE BOARD, HOUSEHOLD GOODS CARRIERS' BUREAU, INC.

My name is Sidney Epstein. I am the President of Allied Van Lines, Inc., with headquarters at 25th Avenue and Roosevelt Road, Broadview, IL. This statement is submitted on behalf of the Household Goods Carriers' Bureau, Inc. (Bureau) and its approximately 1,600 member carriers in response to the Committee's kind invitation to address the subject of the Interstate Commerce Commission's implementation of the recently enacted Household Goods Transportation Act of 1980 and the Motor Carrier Act of 1980.

The Bureau is a ratemaking organization operating pursuant to a collective ratemaking agreement that has been filed with the ICC pursuant to the provisions of 49 U.S.C. § 10706. The Bureau is the principal collective ratemaking arm of the household goods transportation industry. It represents the vast majority of all household goods carriers who transport the great preponderance of all household goods traffic as that term is defined at 49 U.S.C. § 10102(10). The Bureau's rates and charges apply throughout the United States and betwen points in the United States on the one hand, and, points in Canada and Mexico, on the other.

I have been in the moving industry my entire working life, approximately 40 years. For a number of years I was a part of a family-operated moving concern which operated from Stamford, Connecticut. My family's business (Stamford Storage Company) operated prior to the introduction of regulation by the Interstate Commerce Commission in 1935 and after ICC regulation was introduced. I am thoroughly familiar with the operations of small moving companies as well as large national van lines such as Allied. For 25 years I was employed by Neptune Worldwide Moving Inc., where I held a variety of positions from salesman through Vice President of Operations.

I have been very active in industry affairs throughout my business career. I am active in the Household Goods Carriers' Bureau, Inc. where I currently serve as its Chairman of the Board of Directors, and also a a member of its Rates and Tariff Committee. Additionally, I am a member of the Board of Directors of the American Movers Conference of the American Trucking Associations, Inc.

As the representative of the industry's principal rate bureau my testimony today will be confined to matters bearing upon carrier ratemaking as it has evolved under the 1980 legislation. Of course the membership of the Bureau has a vital interest in the many operational regulations promulgated by the Commission in the name of the new legislation but, as a ratemaking arm of the industry, our principal concern is with matters affecting carrier ratemaking. To the extent other organizations like the American Movers Conference address topics such as the new regulations promulgated by the Commission in Ex Parte No. MC–19 (Sub-No. 36), Practices of Motor Common Carriers of Household Goods (Review of Operational Regulations), the Bureau fully supports and endorses in all respects their recommendations.

Since the new legislation was enacted and, in fact, prior to its enactment, members of the Bureau established through their collective Bureau procedures and independent action procedures a variety of price/service options to the public covering the transportation of household goods. These options have taken a variety of forms: (1) guaranteed carrier pickups and deliveries; (2) binding estimates; (3) coupon discounts; (4) replacement value protection tariff provisions; (5) replacement cost protection tariff provisions; (6) percentage discounts based upon volume tendered or charges paid; and (7) seasonal rate adjustments. These innovations result in part from the flexibility accorded carriers by the new legislation and in part because of a general decline in available traffic which can be attributed to the slump in the housing industry, fewer corporate employee relocations, high interest rates and the general decline in business. Frankly, it is very difficult to precisely attribute the pricing innovations to any one or more of these factors, but, I believe it is correct to say that all have had a bearing upon the overall situation. The Interstate Commerce Commission's role throughout this entire pricing process has been largely passive. It is a fact that the Commission will allow virtually any form of carrier tariff publication to be held out to the public if it is advanced under the flag of reduced rates, innovative pricing, or increased competition. It is also a fact that the Commission is for the most part ignoring all of the many regulations it has

promulgated over the years as well as its and Court case law bearing upon the establishment of nondiscriminatory and nonpredatory carrier tariff provisions and rates and charges. If it is this Committee's desire, the staff of the Bureau can document, chapter and verse, the many destructive ratemaking aberrations which the Commission has permitted to become a part of the carriers' holding out to the public all of which flies directly in the face of existing statutory law, well established case law and currently effective Commission regulations. Three prime examples of the sort of derogation of responsibility undertaken by the Commission will serve to illustrate my point.

The Subcommittee is certainly familiar with the Commission's Ex Parte MC–19 (Sub-No. 36) proceeding through which it has proposed cancellation of all existing regulations applicable to the transportation of household goods and the establishment of new regulations the Commission argues implement and give force to the legislative intent expressed in the Household Goods Transportation Act of 1980. The American Movers Conference testimony before this Committee deals at length with that proceeding and the rules proposed and I will not attempt to duplicate that effort. Three proposals emanating from the Ex Parte MC–19 (Sub-No. 36) proceeding do, however, have a significant bearing upon the ratemaking activities engaged in by household goods carriers and the public and because they do, I will discuss each of those proposals.

First, many years ago the Commission promulgated a well-reasoned regulation (49 C.F.R. § 1056.18) following lengthy consideration in a formal Commission proceeding.[1] In a nutshell its purpose was to prohibit household goods carriers from engaging in the practice of maintaining two levels of rates or charges for precisely the same carrier service, one published by an agent/carrier under its own operating authority and the second under the operating authority of the agent's principal carrier, a van line. Simply put, the Commission found that the public must be protected against the discriminatory abuses inherent in such carrier/agent ratemaking practices. The evil designed to be cured is not at all difficult to understand. An agent who solicits a shipment can elect to move that shipment under its own operating authority or under the operating authority of its principal van line carrier. The decision to use the authority of one or the other is not actually made until a customer signs a bill of lading, usually immediately before a shipment is ready for transportation. The Commission recognized that such a situation leaves carriers free to move shipments at higher levels of rates and charges when circumstances would permit a carrier to take advantage of given operating conditions such as the busy moving season, number of available carriers, amount of available tonnage and other factors that bear upon carrier operating conditions. In its formal decision the Commission was careful to note that shipments which are subject to higher rates may even move in the same vehicles from the same origins to the same destinations with shipments moving at lower carrier rates.[2]

The Commission's action in Ex Parte MC–19 (Sub-No. 36) will cancel this long-standing rule with nothing more than a cursory explanation of the underlying rationale. All the Commission has said is that it believes concellation of this rule will permit price and service competition between and among principal carriers and their agents and that such competition was a prime motivation behind the National Transportation Policy expressed in the new legislation. We could not disagree more. We have absolutely no quarrel with the matter of increased price and service competition in our industry but we most vigorously oppose any form of destructive rate competition which will have the effect of giving the industry a reputation for "double dealing" ratemaking and a disregard for consumer interests. Moreover, we do not for a moment believe Congress intends that household goods carriers should engage in destructive ratemaking practices particularly when the brunt of the abuses flowing from those practices must be borne by the shipping public. There is, we believe, a sound basis for our position which can be traced directly to the legislative history underlying the Household Goods Transportation Act of 1980.

The House Report accompanying the new legislation indicates that Congress clearly recognized the importance of agents to the households goods carrier industry. The Report specifically states that "One of the other features of the moving industry which sets it apart is its heavy dependence on agents." U.S. Code Cong. & Ad. News 10A, 7715. This same view is reflected in the Senate Report. See S.R. 96–497, p. 7, 96th Cong., 1st Sess. Both the Senate and the House also recognized that some agents are carriers and that they can compete with their principals. See U.S. Code Cong. & Ad. News 10A, 7724, and Senate Report 96–497, p. 8. Congress,

[1] *Practices of Motor Common Carriers of Household Goods*, 17 MCC 467 (1939).
[2] 17 MCC at 498.

however, did not then proceed to state a policy designed to promote competition between the two. Instead, Congress took the extraordinary step of granting antitrust immunity to principal carriers and their non-carrier and carrier agents alike so the antitrust laws would not be a prohibition to the anticompetitive dealings between principal carriers and agents. Clearly, the Senate Report demonstrates that Congress did not intend to promote competition between principals and agents. It states:

"There is a provision in the act that immunizes carriers and their agents from the antitrust laws with respect to certain dealings between them. This section is needed in order to permit the continued relationships developed and approved over the years of certain van line companies. In some cases, van line companies are composed and owned by agents who themselves are carriers within limited geographical areas. In some cases, the agents, as carriers themselves, have independent authority to operate in areas in which the principal carrier also may operate. Accordingly, in the absence of immunity, there could be some problems concerning immunity from the antitrust laws. The bill merely permits existing relationships to continue. During the course of its deliberations, the Committee considered a proposal to include within the immunity section language that would grant immunity to agreements concerning exclusive agency representation, or the fiduciary duty of loyalty of an agent not to compete with the principal concerning the subject matter of the agency. The Committee determined that this type of relationship is not a violation of the antitrust laws and is standard agency law as expressed in section 393 of the Restatement of the Law of Agencies section. The Committee felt that inclusion of such language could imply that such relationships are a violation of the antitrust laws in the absence of immunity. Thus, the Committee determined not to include such language in the bill." S.R. 96–497, p. 8.

The language in the House Report likewise demonstrates that competition between agents and principals was not the object or a principal motivation behind the new legislation:

"New section 10934 also contains a provision which immunizes from the antitrust laws certain discussions and agreements between carriers and their agents related to rates, changes, and allowances for transportation provided, under the authority of the carriers. Further, such discussions and agreements related to the ownership of a carrier by an agent of membership on the carrier's board of directors by an agent are immune. The purpose of this provision is to allow the continuation of certain relationships between carriers and agents which have been established over the years. In come cases, the carriers are composed and owned by agents who themselves are carriers within limited geographical areas. In other cases, the agents, as carriers themselves, have independent authority to operate in areas in which the principal carrier operates. These relationships could be jeopardized in the absence of antitrust immunity. It is important to note that these exemptions are narrow ones. Specifically, the immunity provided by sub-sections (d)(1)–(3) applies only to discussions or agreements related to rates, charges, and allowances offered on traffic carried under the authority of the principal carrier. Similarly, subsection (d)(4) provides only a limited exemption. It does not exempt from the antitrust laws such things as anticompetitive mergers. H.R. 96–1372, p. 10."

We believe that the relevant legislative history and Section 10934 of the Act clearly establish that Congress intended that the fiduciary duty of loyalty of an agent not to compete with its principal must be preserved in the household goods transportation industry and that existing relationships between agents and principals which prohibit destructive competition between the two should remain in force. Most certainly the granting of antitrust immunity to principals and agents to engage in certain ratemaking activities makes even clearer the fact that Congress did not intend to foster the destructive competition the ICC erroneously says was intended. The Commission on the other hand has taken its own view of the legislative intent in the name of increased competition. In so doing it has provided no reasoned analysis of the legislative history I refer to and, in fact, from all appearances it has completely ignored that legislative history.

The second Commission action we will call to the Committee's attention also emanates from the proposals contained in Ex Parte MC–19 (Sub-No. 36). The action proposed is the same as that involving agent/principal ratemaking I have just discussed and proposes revocation of a second well-reasoned Commission regulation (49 C.F.R. § 1056.21). It was also promulgated following a lengthy proceeding wherein the Commission concluded that such a regulation was necessary to protect the public interest.[3] The rule in question requires that carriers maintain only one level of rates for transportation between the same points. In other words, the rule

[3] Practices of Motor Common Carriers of Household Goods, 118 MCC 762 (1973).

prohibits carriers from maintaining one level of rates for transportation over the route of their operating authority (referred to as single-line rates) and different levels of rates for transportation involving partial use of their operating authority and the operating authority(ies) of other carriers (referred to as joint-line rates). Cancellation of this rule will mean that consumer shippers will be faced with two or more levels of carrier rates available to the same carrier transportation service.

In its formal decision establishing this rule the Commission acknowledged that there is no operational difference between joint-line or single-line service in the household goods transportation industry. Shipments are not physically transferred from one carrier's vehicle to another carrier's vehicle but move straight through to destination, often in the same vehicle. If the rule is cancelled carriers will be free to maintain multiple rate levels, many applicable to shipments handled in joint-line service and one applicable to shipments transported in single carrier service. This can only mean consumers will pay higher rates when operating circumstances permit carriers to take advantage of the situation presented. Just as importantly, the average consumer is completely unaware of the factors that would dictate the application of one level of rates as opposed to another and is in no position to protect against the assessement of highest available rates. Consumers simply do not route traffic and do not know that different rate levels are available via different carrier routings. The consumer, therefore, will pay the lawful rate via the route selected by the carrier which will inevitably result in the consumer bearing higher transportation costs. Once again the Commission has provided no clear reason for its action in cancelling this rule other than the catch phrase excuse of fostering competition in line with the mandate of the National Transportation Policy.

If anyone believes that cancellation of this rule will result in lower rates to the consumer, an illustration will prove otherwise. Under no imaginable circumstance would a carrier single-line rate be reduced to compete with a joint-line rate or would a joint-line rate be reduced to compete with a single-line rate. For example, assume the existence of a joint-line rate of $10 per hundredweight applicable between points A and B. An originating carrier with single-line authority between those points has absolutely no incentive to establish a $9 per hundredweight single-line rate to compete with the $10 joint-line rate. The originating carrier with single-line authority already has the power to route the traffic over its single-line route to attract traffic from the joint-line route. Since consumers shipping household goods do not route their traffic, the single-line carrier can route the traffic over that single-line route regardless of the rate. The same is true with respect to a reduction of a joint-line rate in order to compete with a single-line rate. It should be evident that a business does not benefit by competing with itself. No carrier is going to agree to lower a joint-line rate so it can compete with its own single-line rate.

Once again we insist that the legislative history underlying the new legislation does not support destructive carrier ratemaking of this nature. In point of fact, in the situation I have just described, there is no so-called rate competition for the very simple reason that no carrier is going to apply a combination of rates which will produce for it lower transportation revenue. And, of course, consumer shippers have absolutely no knowledge of carrier routings or the specific rates which apply to their shipments via those specific routings.

The final Commission action emanating from Ex Parte MC–19 (Sub-No. 36) I will address involves binding estimates. The Bureau has informed the Commission that its regulation is fine as far as it goes but that the Commission has failed to conform its regulation to clear statutory language.

It seems abundantly clear to us that Section 10734 of the new Act authorizing binding estimates also requires any carrier who offers such estimates to conform to the tariff requirements of Section 10762 of the Interstate Commerce Act. The Commission's proposed rule completely overlooks this clear and essential requirement. Of course the Act also mandates that binding estimates "* * * must be available on a nonpreferential basis to shippers and must not result in charges to shippers which are predatory." We believe Congress fully intended that a mechanism would be available through which members of the public, shippers and carriers alike, could reach a determination as to whether binding estimates are or are not preferential or predatory. In our view this is precisely why Congress required observance of normal, traditional tariff filing requirements. Obviously, it is only through publication and public inspection that binding estimates can be determined to be nonpreferential and nonpredatory as required by Section 10734(a)(2) of the new Act. Compliance with the mandate expressed in Section 10734 requires compliance with Section 10762 as a prerequisite to the offering of binding estimates. The Commission has completely ignored this clear limitation imposed by Congress when carriers elect to offer binding estimates.

On the question of whether rates and binding estimates are in fact preferential or predatory the Commission has said that it will make such determinations on a case by case basis. Such an approach has no meaning at all. Neither shippers nor carriers could develop a record from which a formal Commission proceeding could be instituted to reach the case by case determination the Commission says it will undertake. An illustration will make this point. If a large national account shipper of household goods suspects that a van line is, through its binding estimate program offering a shipper competitor rates and transportation charges which are preferential or predatory, there is simply no public record available to that shipper through which it could determine the actual transportation charges assessed for the transportation performed. Imagine for a moment the plight of the individual consumer shipper or a consumer group which undertook the task of determining the binding estimate ratemaking practices of a particular carrier or carriers. In our view when Congress directed that the public shall not be subjected to preferential or predatory binding estimates, this required the Commission to adopt regulations which would accomplish that objective.

Apparently there is merit to my industry's objection to the Commission's expressed intention to revoke the ratemaking rules I refer to and do nothing to comply with the Congressional mandate concerning tariff requirements for binding estimate rates. The United States Court of Appeals for the Seventh Circuit entered an order on July 7, 1981, granting a motion to stay the Commission's decision in Ex Parte No. MC–19 (Sub-No. 36) pending judicial review.[4] The Court's order was entered without prejudice to an application to vacate the stay which could be filed by the Commission on the date following oral argument before the Seventh Circuit. Oral argument was heard on September 23, 1981, and the Commission did renew its motion to vacate the stay which motion was denied by order of the Court entered September 25, 1981. Of course, I am hopeful that the Seventh Circuit decision in this case finds that the action taken by the Commission was ill-conceived and, in fact, contrary to the objectives enunciated in the Household Goods Transportation Act of 1980. It is indeed unfortunate that my industry finds it necessary to challenge Commission action immediately on the heels of major Congressional statutory revisions which were presumed to set a new course for the regulation of household goods carriers.

I would also like to call the Committee's attention to an action which presents a most alarming situation to household goods carriers. I refer to the Commission order served October 8, 1981, in Ex Parte No. 311 (Sub-No. 4), *Modification of the Motor Carrier Fuel Surcharge Program*, an administratively final decision which mandates the payment of a mileage based fuel payment to a large segment of the labor force (owner-operators) utilized by household goods carriers. While the Household Goods Transprtation Act of 1980 expressly states an intention to provide household goods carriers with maximum flexibliity in the pricing of their services, the Commission in Ex Parte No. 311 (Sub-No. 4) mandates a mileage based fuel payment to owner-operators that will initially cost my industry in the neighborhood of $150 million. Thus, from the very outset, any rates proposed by carriers individually or through their collective process must account for an expenditure of this magnitude. This is not rate flexibility.

There is one final matter we wish to bring to the Committee's attention. It deals with implementation of Section 14 of the Motor Carrier Act of 1980. That section mandates the manner in which collective ratemaking organizations such as the Bureau I represent shall continue to function. In our view the provisions of Section 14 are quite explicit and do not require further Commission action for their implementation. (The one exception has to do with the setting of reasonable quorum standards under which certain rate bureau activities can be conducted.) Ignoring all of this the Commission went full steam ahead adopting detailed and complex regulations further defining the intention of Congress and imposing many limitations on bureau ratemaking activities which, in our view, are not contemplated or required by the new Act. The formal Commission proceeding through which this has been accomplished is Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96–296.* A reading of that decision should provide Congress with a clear indication of the extent to which the Commission has in fact substituted its judgment for that of Congress.

---

[4] No. 81-1724, *North American Van Lines, Inc., et al.* v. *Interstate Commerce Commission and United States of America;* and No. 81-1726, *American Red Ball Transit Co., et al.* v. *Interstate Commerce Commission and United States of America.*

I thank the Committee for the opportunity to appear before it and I commend its efforts to fairly treat the industry I represent through its review of the recent actions of the Interstate Commerce Commission.

Senator DANFORTH. The final witnesses are members of a panel of American Movers Conference, Earl Freitag, David Nilson, Charles McDaniel, and G. Zan Golden.

Gentlemen, if you would identify yourselves for the reporter, and you have 10 minutes to divide up any way you like.

STATEMENTS OF EARL FREITAG, VICE PRESIDENT, UNITED VAN LINES: DAVID NILSON, DIRECTOR OF PROGRAMS, NILSON VAN AND STORAGE, INC.: CHARLES G. McDANIEL, JR., PRESIDENT, HILLDRUP VAN & STORAGE, INC.: AND G. ZAN GOLDEN, SENIOR VICE PRESIDENT, NORTH AMERICAN VAN LINES, INC.

Mr. NILSON. Im David Nilson, American Movers Conference.

Mr. FREITAG. I'm Earl Freitag with United Van Lines.

Mr. MCDANIEL. Charles McDaniel of Hilldrup Transfer & Storage, Inc..

Mr. GOLDEN. Zan Golden, North American Van Lines.

Mr. FREITAG. Mr. Chairman, we as a panel represent the American Movers Conference, and we feel that we represent the entire moving industry. We are pleased to have the opportunity to testify before you today and let you hear our view on what we feel has been a misinterpretation of the Household Goods Transportation Act by some of our Federal agencies.

Our main purpose here today is to let you know we believe the Household Goods Transportation Act of 1980 is a good law as it's been passed, but we question the interpretation of the act. The industry expected the act to result in significant reductions in regulations. This has not come about at this time. The regulations that have been established by the Interstate Commerce Commission under MC–19 (36) have evolved into a renumbering of the past existing regulations.

The Interstate Commerce Commission in their procedure requested comments from the industry as well as all parties. In response to the Commission's invitation to comment on how the Commission could best carry out its mandate under the act, the American Moving Conference and the entire industry offered a very practical suggestion that a new and fresh start was needed to the then existing regulations, an alternative to the Commission's traditional approach.

The industry suggested that the Commission adopt so-called zero based regulations. This approach more closely mirrored the defined goals of Congress to achieve minimum regulation and had at its heart a methodology that first identified those areas appropriate for regulation, where there is a need for protection to shippers and left other areas of operational significance to the good judgment of a properly managed carrier.

It is our purpose to explain—it was our purpose to explain to the Commission that areas that do not have a serious potential for customer harm are better left to the correction by the marketplace.

Much of what the Commission has accomplished is a renumbering of its old regulations. The substance of most of the revised

regulations remained unchanged in the present form. The Commission is proposed as an example to circumscribe the flexibility that carriers are to enjoy in the estimating area. The Commission will accomplish this by its proposed performance standard on estimating by demanding an accuracy level of 90 percent on all nonbinding estimates.

This proposed standard which we question as appropriate under the act will force carriers that decide to give nonbinding estimates to pay more attention to the artificial standard as established than the accuracy of their estimates.

We would again ask that your committee review, ask that the Interstate Commerce Committee or the Interstate Commerce Commission review with the industry the zero base regulations that has been proposed by the industry and that we in the future discuss these regulations before they are published.

At this time, I would like to have Mr. McDaniel speak of how the regulations, a few of them, affect the small agent.

Mr. MCDANIEL. Thank you, Mr. Chairman. I would like to once again identify myself as Charles McDaniel, president of Hilldrup Transfer, a local moving concern that serves as an agent for a national van line, and also acts as a small carrier on its own authority, principally on the east coast.

Most small agents and carriers support the position of the American Movers Conference in their written statement, and we urge your attention to that statement, because we feel it accurately represents the feelings of the industry.

Agents bear the cost, a great portion of the cost, of providing the moving service. They are coming into direct contact with the customer. In this position we feel we are qualified to comment on the effects of this legislation and its implementation. Agents, small carriers, people on the firing line are very supportive of the Household Goods Transportation Act. We feel it's appropriate legislation, and we feel the committee and the Congress did a good job in preparing it.

We do have serious problems with the implementation of the act. We think that's best demonstrated by the fact that the ICC's rules are currently in court, and there are substantial arguments and dispute over the validity of these rules.

We don't know the outcome, but we certainly feel that there's cause for great concern, and the committee should be aware of this problem, and that the future outcome should be watched very closely.

I want to recommend the approach expressed by the American Movers Conference for zero based regulations, minimum regulations. As small carrier agents, we bear the brunt of these regulations. They're certainly of great concern.

So far the ICC has not implemented the act in such a way to remove burdensome regulation from agents and small carriers. We encourage your constant review of the Interstate Commerce Commission and how they implement the act.

We're optimistic that a new direction of the ICC will take place with Chairman Taylor. He certainly has been more cooperative, and we feel like the Commission hopefully will move in a direction that is more in tune with what the Congress mandated. We are

concerned about past direction of the Commission, but will leave the future to be seen once the court speaks.

I do want to report that most agents feel that not enough time has passed so we can accurately determine the effects of the act. We need a little more time. The economy is having a bad effect on our industry right now, and it's hard to tell what the economy is doing, and what the regulations are doing. So we really need a little more time to give you an accurate picture.

I do want to once again emphasize that we are concerned about the burdensome regulations and ask for your continued review and appreciate the chance to testify on behalf of the agents and small carriers.

Mr. NILSON. Mr. Chairman, again, I'm David Nilson, Nilson Van & Storage, Columbia, S.C. We're a family owned business that was established by my grandfather in 1938. We're an agent of a national carrier. We are an interstate carrier in our own right operating through 31 States.

Today I would like to focus on section 6 subsection (b)(3) of the act. That section of the act is the one that mandates that Government agencies follow the will of Congress and reduce their regulations to the maximum extent possible and allow carriers the maximum flexibility in the method of their operations.

The report that accompanied the act specifically named the Department of Defense as one of the Government agencies required to accomplish those things. I can assure you the Department of Defense has ignored the mandate of Congress. The Military Traffic Management Command which manages the movement of household goods for DOD has continued to crank out needless and burdensome regulations, resulting in thousands of pieces of paper, increased administrative time, increased carrier costs, increased costs to the Government, not to mention frustration.

And the sad fact is that their regulations do nothing to improve service for the military members, although we assume that to be their purpose. Even though we try to work closely with that body, at times we are ignored. Such is the case with their carrier evaluation reporting system.

I was going to thank Senator Schmitt here this morning, because he worked in 1980 to get a General Accounting Office review of this program, and that review was very, very critical of the CERS or carrier evaluation program; however, the DOD didn't see fit to accept the critical aspect of that report. They revised or came out with a program called CERS 2 which is even worse. That program is apparently on hold, because Senator Thurmond has requested another GAO review of the same program.

To review very quickly, I guess it's my age, Senator, but I can't understand how one Government agency can completely ignore the will of Congress, and it appears that's what they're doing.

Senator DANFORTH. When you find out, let me know.

Mr. NILSON. I sure will.

Senator DANFORTH. Thank you very much.

Let me say this with respect to the Defense Department and the Air Force, whatever the complaints about that. We will make an inquiry, our staff, the subcommittee will certainly bring this testimony to the attention of the Defense Department to find out what

justification, if any, the Department has for expanding the regulatory burden at the time that Congress intends to contract the regulatory burden. Perhaps there's some good explanation for it.

But you are absolutely correct in pointing out, Mr. Nilson, that we just don't want to be in the business of passing laws to no avail around here, and that the effort in passing this bill was to make matters simpler and easier and more manageable, as far as your industry is concerned. And if, in fact, a department of the Federal Government is proceeding at a rapid pace in exactly the opposite direction, then we will consider what further steps, legislative or otherwise, are necessary.

Mr. NILSON. Mr. Chairman, we couldn't ask anything more of you, if you would that for us.

Senator DANFORTH. We will do that. And I appreciate your calling that to our attention.

Gentlemen, thank you very much. I appreciate your testimony.

[The statement follows:]

STATEMENT OF THE AMERICAN MOVERS CONFERENCE

INTRODUCTION

Mr. Chairman and members of the subcommittee, my name is Earl Freitag and I an vice president of United Van Lines, Inc., Fenton, Missouri. I am also a member of the American Movers Conference's Committee on Regulatory Affairs. Accompanying me is Charles G. McDaniel, Jr., president of Hilldrup Transfer and Storage of Fredericksburg, Virginia; David Nilson, director of programs for Nilson Van and Storage of Columbia, South Carolina; and G. Zan Golden, senior vice president of North American Van Lines, Inc., Fort Wayne, Indiana. Mr. McDaniel is a director of the American Movers Conference and is chairman of its Committee on Mover-Agent Affairs. Mr. Nilson is representing the American Movers Conference Military Agency Affairs Panel. We, as part of the industry panel before you, are in unified agreement that the Interestate Commerce Commission and the Department of Defense are not properly carrying out the purposes behind the Household Goods Transportation Act of 1980.

The American Movers Conference, Inc.,[1] is pleased to have the opportunity to offer testimony before this Subcommittee and to make its views known on how the Interstate Commerce Commission (ICC) and the Department of Defense (DOD) are administering Public Law 96-454, The Household Goods Transportation Act of 1980. The reasons for the passage of the Act are well documented in Senate and House hearing reports and it would serve no purpose here to reiterate the difficulties the household goods moving industry has had in the past with excessive and unnecessary government regulation. Unfortunately, those difficulties with the ICC and DOD appear to be of a continuing nature due to their failure, or unwillingness, to follow the clear guidelines that Congress set forth in Public Law 96-454.

Our main purpose here today is to offer constructive criticism of the ICC and DOD, as we firmly believe that these agencies have hit wide of the mark of Congress' objective to effect substantive change in the moving industry by reducing the excessive paperwork and regulation that had grown uncontrolled in recent years.

Our support for the passage of the Act was grounded in our firm belief that it was time to get the oppressive hand of government out of industry business where it ill-served the interests of consumers. It is our understanding that one of the immediate goals that Congress desired was to have the government cease injecting itself into the day-to-day relationship between the mover and its customers and to, henceforth, exercise its limited powers with an eye focused upon judicious restraint so that the

[1] American Movers Conference is a national trade association of the household goods moving industry, representing carriers and agents of all sizes on whose behalf it customarily appears in proceedings before the Interstate Commerce Commission, the courts, and other Federal agencies. Its members transport over 90 percent of the household goods moved in interstate commerce. It is a nonstock, nonprofit, corporation organized and existing under the laws of the District of Columbia, with offices at 1117 North 19th Street, Arlington, Va. 22209.

market-place of competition could determine the level of responsive and satisfactory service that consumers require.

The industry expected the Act to result in a significant reduction in regulation. That has not come about. On the heels of the passage of the Act, the Commission proposed new regulations which will be discussed later in this statement. In another proceeding released several months after the Act's enactment, the Commission announced that henceforth it would discontinue treating household goods as a unique commodity when considering grants of operating authority.

The end product of both these proceedings forced the industry to challenge the Commission in court. The proceeding challenging the new regulations for the household goods industry is still pending in the U.S. Court of Appeals for the Seventh Circuit. However, in a recent decision of the U.S. Court of Appeals for the Fifth Circuit, the Court totally agreed with the industry that the Commission was in error when it subsumed household goods in general commodities.

While we are quite pleased that the Fifth Circuit Court has agreed with the industry's position, we would suggest that the consumption of much money and time by being forced to seek a remedy through the courts is never a good solution.

The industry is watching closely as the Commission goes through its transition to a new administration. We would hope that the new Commission would indeed carry out the intent of Congress to reduce unnecessary regulation.

THE INTERSTATE COMMERCE COMMISSION HAS FAILED TO FOLLOW THE INTENTIONS OF CONGRESS TO EFFECT SUBSTANTIAL CHANGE IN ITS APPROACH TO REGULATION OF THE HOUSEHOLD GOODS MOVING INDUSTRY

The overall purpose of the Household Goods Transportation Act was to stress competition for the benefit of consumers while minimizing regulation and paperwork to the maximum extent feasible. To achieve this purpose, a framework was crafted for future Commission regulation that had a threefold emphasis: (1) the reduction of unnecessary regulation; (2) the strengthening of workable consumer remedies and protections; and (3) the establishment of maximum flexibility in pricing and offering services to consumers. More specifically, the Commission was directed in Section 6 of the Act to review and revise all of its household goods operational regulations with the view towards achieving the very minimum of regulation consistent with protection of consumers.

In response to the Commission's invitation to comment on how the Commission could best carry out this mandate, the household goods moving industry offered the eminently practical suggestion that a new and fresh start was needed to cure the maladies of the existing regulations. As an alternative to the Commission's traditional "band-aid" approach, the industry suggested that the Commission adopt so-called "zero-based regulations." This approach more closely mirrored the defined goal of Congress to achieve minimum regulation and had at its heart a methodology that first identified those areas appropriate for regulation where there is a need for protection of shippers and left other areas of operational significance to the good business judgment of a properly managed carrier. It was our purpose to explain to the Commission that areas that do not have a serious potential for consumer harm are better left to correction by the marketplace. Moreover, we suggested that even where the potential for consumer harm is manifested, that the better approach would be to scrutinize the matter to determine if carrier responsiveness through competition, rather than burdensome regulation, could resolve the perceived problem.

The guidelines and regulations which we proposed set forth clear carrier responsibilities to consumers, such as the provision of concise information concerning carrier services and consumer rights and included as well regulations that assured consumers of timely service and accurate weights. These guidelines, which clothed carriers with the discretion and flexibility envisioned by the new Act, seemed to make much more sense than regulations that mandate unnecessary and inefficient conduct.

While suggesting that this new approach to regulation was desirable, the Commission rejected the industry suggestion with the observation that it was not consistent with the Congressional mandate to minimize regulations and, simultaneously, protect consumers. The Commission stated that consumer complaints in the areas of estimating practices, reasonable dispatch, and complaint handling justified the Commission's continued involvement in the business of carriers.

THE INTERSTATE COMMERCE COMMISSION DID NOT FOLLOW THE INTENT OF CONGRESS TO REDUCE REGULATION

The best illustration of the Commission's failure to appreciate what Congress had in mind is seen, overall, in the proposed regulations the Commission announced shortly after the Act was signed. Those regulations were equally or more comprehensive in content and burden than existing regulations. Perhaps more importantly, in many respects they bordered on the ridiculous, and rather than curtail intrusiveness into management discretion and carrier operations, proposed to further it. One regulation directed that all packing material and pads, etc., be off the truck during weighing. This ill-conceived regulation immediately raised the question in the industry's mind over what to do in inclement weather when such material suffered the great potential for damage. Another rule mandated that carriers must provide toll-free telephone numbers to all shippers, while another required the consent of a shipper to deliver a delayed shipment without regard to the domino effect that further delay would cause other shippers.

The household goods moving industry filed extensive comments in the short time afforded, criticizing the Commission's overall approach to minimizing regulation and paperwork and objecting strenuously to the potential for overkill through continued oppressive regulation. Overall, we could not glean from the Commission's proposed regulations how regulation was being reduced, or how, under any stretch of the imagination, the consumer was being better protected.

When the Commission announced its final operational rules, some of the industry suggestions had been adopted. Initially, we must acknowledge that the Commission has confined the scope of the new rules to first proviso shipments only. However, this is exactly the type of illusion of change referred to previously, because the fact that the previous regulations applied to second and third proviso shipments did not create significant problems for the industry. In fact, carriers were permitted to obtain waivers from second and third proviso shippers on the application of some of those regulations. Secondly, we believe it important to remember that a number of regulations were automatically eliminated by the Act and were not eliminated as a result of Commission initiative. For example, old regulation § 1056.2 required all rates to be based upon amounts per hundred pounds. Section 4 of the Act superceded this regulation when it clothed carriers with the discretion to offer binding estimates based upon an estimate of charges. Likewise, the enactment of Section 6 of the Act, which removed the Commission's jurisdiction over methods, forms, and formulas for estimating, demanded the elimination of § 1056.8, which prescribed a specific form and formula for carrier estimates.

Much of what the Commission has accomplished is a renumbering of its old regulations. The substance of most of the revised regulations is unchanged. However, while the substance has not changed, the format of paperwork required by particular regulations has been changed and now requires carriers to, accordingly, print new forms. For example, the "Order for Service" required under § 1056.5 has been expanded to require more entries than previously required. This, of course, requires a revision of that form. In addition, this same information must be duplicated on the bill of lading which also has suffered an expansion of required information. Likewise, this form must be revised.

By contrast, the industry asked the Commission to adopt the practical suggestion of permitting carriers to have the flexibility to combine these two forms. Unfortunately, the Commission ignored our suggestion.

On final analysis, the Commision continues to overregulate in areas that have scant relationship to the protection of individual shippers. Following are some prime examples of the necessary and impractical nature of the new rules:

1. 1056.1 Definitions.—The Act specifically delineates where consumer protection is needed—for individual shippers. The report accompanying the Act describes individual shippers as individuals moving their personal effects who pay their own shipping costs, normally on a collect-on-delivery basis. Further, the Report explains that because of their unfamiliarity with how the industry works, "Individual shippers" tend to be more vulnerable than other shippers and, hence, in need of protections that are not necessary for other motor carrier shippers. Report No. 96-1372, 96th Congress, 2nd Session, September 23, 1980, at 5. By contrast, the Commission has gone beyond the intended scope of consumer protection and defined individual shipper in 1056.1 as any person who owns the goods and is identified as the consignor or consignee on the bill of lading. In other words, the entries on the bill of lading determines the status of the shipper. This expands the application of a number of regulatory requirements [2] beyond COD shippers to cover many commer-

[2] 49 C.F.R. 1056.2, 1056.4, 1056.5, 1056.8, 1056.9, 1056.16, and 1056.18.

cial shippers. We do not believe it was intended that all the costly procedural and paperwork safeguards necessary for unsophisticated individual shippers be required where a commercial shipper pays the charges.

2. 1056.13 Complaint and inquiry handling.—This rule establishes a new regulatory requirement for carriers to keep a written record of all inquiries and complaints received from shippers by any means of communication. Needless to say, carriers receive a constant stream of communications, both written but more commonly by phone, with respect to every conceivable facet of their business. This includes inquiries about delays or delivery times, as well as inquiries which could not conceivably have any relevance to the protection of individual shippers such as of carrier services, computation of estimates and rates, and the like.

Moreover, the regulation puts the burden on the carrier to put into writing non-written complaints and inquiries from shippers. No distinction is made between "complaints" or inquiries, and no distinction is made between inquiries made of an agent, or at the principal office of the carrier, or of the driver of a truck, or otherwise. On its face, it requires that an oral inquiry made of a driver be reduced to writing by the driver, and by transmitted to some single permanent file for documentation.

It is a regulation without scope, difinition, or reason. It merely imposes additional unnecessary and burdensome paperwork for all carriers.

3. 1056.5 Order for Service and 1056.6 Bill of Lading.—Almonst every required item in the Order for Service is also required in the bill of lading. Yet, the Commission has required two separate documents to be completed, with varying requirements as to when and how and what to do with each piece of paper. This is yet another example of unnecessary and duplicative paperwork, without any reasonable nexus to the protection of the individual shipper. The former could easily be combined.

4. 1056.15 Collection of Freight Charges on Household Goods Shipments Involving Loss or Destruction In Transit.—This rule provides that in the event any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, no carrier may collect, or require a shipper to pay at the time of delivery, that proportion of the published freight charges corresponding to that portion of the shipment which is lost or destroyed in transit.

The effect of this regulation turns the driver, who delivers the goods to the consignee, into a claims asjuster. It requires the driver on the spot to determine if the subject goods are "lost," "damaged," or "repairable," and requires the driver to estimate what portion of the shipment's weight was made up by the damaged or lost goods. This requires the driver to act as a tariff clerk and recompute freight charges.

The regulation does not relate to claims for loss by a shipper for the value of damaged or lost goods. Such claims are handled separately through the claims handling procedures the carrier makes available. It deals solely with the collection of the freight charges by the delivering driver. The settlement of the claim, as a rule, follows such collection.

The worst aspect of the regulation is that it places a cloud over the entire transaction at the time of delivery. It places a burden on the shipper and carrier to reach some agreement as to the weight to be allocated to the missing or damaged goods, in order for the driver to collect the freight charges on the remaining goods. Alternatively, it poses a risk that the driver must refuse to unload because of a lack of agreement, or that if he has already unloaded, the risk that he is unable to collect any charges. Significantly, all of this is quite unnecessary. The Commission has already established a specific regulatory procedure for the refund of excess freight charges, pursuant to 49 CFR 1008. Under this procedure, the carrier must refund excess freight charges within 60 days of delivery. These latter regulations were enacted in September 1978, and eliminate the need for Section 1056.15(b), even if that section provided a workable procedure.

THE COMMISSION HAS IGNORED AND CIRCUMSCRIBED THE FLEXIBILITY THAT CONGRESS INTENDED FOR THE INDUSTRY

The industry was to have almost total flexibility in estimating, weighing practices and providing service options. It was felt that the Commission should not be in the business of regulating the day-to-day operations of the household goods industry, and that normal competitive forces would ultimately result in better and more efficient services to consumers. The Commission has ignored this objective and has offered no practical or statutory justification for their intrusion into such areas.

The Act clothed the industry with the "maximum flexibility in weighing shipments." The only tempering consideration on this carrier freedom is to assure that accurate weighing practices are observed.

In § 1056.7(c), *Reweighing of Shipments,* the Commission gives the shipper the impractical and unlimited right to request a reweigh any time before the commencement of unloading and directs carriers to assess charges based upon such reweigh weight notwithstanding that the Act makes it permissive for the carrier to use either the original or the reweigh weight for the assessment of charges. Moreover, the statute makes clear that the carrier may only use the reweigh weight if the shipper observes, or waives observing, the tare and gross wieghing. The Commission compounds the error of this regulation by forcing carriers to publish erroneous information in the new OCP-100 booklet that explains to the consumer that a carrier may not charge for the reweigh no matter what level of cost or inconvenience the carrier suffers.

Charging the customer for a reweigh, pursuant to a proper tariff provision, has been an historic practice of the moving industry and is rooted in the obvious costs experienced when a carrier performs a reweigh. Charging for such a service has nothing whatsoever to do with accurate weighing practices. Under past regulations governing this area, charging for the reweigh was permitted by the rule itself, which, in large part, aided in avoiding such charges by having the shipper advise the carrier of a desire for a reweigh prior to delivery of the shipment and by having the carrier advise the shipper where the reweigh would be performed. The proposed rule is simply impractical and does not assure more accurate weighing practices to the shipper.

Another example of the Commission's unwillingness to follow Congress' direction is illustrated by the Commission's foray into estimating notwithstanding the Act's admonition not to prescribe forms, formulas, methods, or techniques for estimating. The Commission is requiring under proposed § 1056.3(b) that nonbinding estimates must be furnished without charge. This intrusion into estimating cannot be squared with Section 6(b)(2) of the Act which provides that: "any charge for an estimate of charges * * * shall be subject to the antitrust laws".

The Commission is also proposing, in effect, to circumscribe the flexibility that carriers are to enjoy in the estimating area. The Commission will accomplish this by its proposed performance standard on estimating by demanding an accuracy level of 90 percent on all non-binding estimates. This proposed standard, which we question as appropriate under the Act, will force carriers that decide to give non-binding estimates to pay more attention to the artificial standard than the accuracy of their estimates. The only way to attain the standard and also to avoid the consequent penalties, is to give high estimates.

We have filed extensive comments with the Commission offering information that the standard is wholly inappropriate. We have pointed out, through a study by Dr. W. Edwards Deming, that neither government exhortations nor penalties will bring about more accurate estimating. Part of the reason for this is that estimating, an inexact "science" at best, is made more inaccurate with every subsequent change that the consumer makes. Industry studies have shown that this is one of the main underlying causes of inaccurate estimates, with 42.4 percent of consumers changing their minds on what to include in the move after the estimate has been given.

THE INTERSTATE COMMERCE COMMISSION HAS TOTALLY IGNORED THE HOUSEHOLD GOODS TRANSPORTATION AND THE UNIQUENESS OF THE INDUSTRY BY ATTEMPTING TO SUBSUME "HOUSEHOLD GOODS" WITHIN THE BOARD GENERIC DESCRIPTION OF GENERAL COMMODITIES

Unfortunately, the Commission's willingness to ignore the clear intent of Congress as set forth in the Household Goods Transportation Act of 1980 has not been confined to its promulgation of operating regulations. Its decisions in Ex Parte No. 55 (Sub-No. 43A) and Ex Parte No. MC-142 (Sub-No. 1) issued on Christmas eve of last year, in which it concluded that household goods should be included within the definition of general commodities, fly squarely in the face of the actions the Congress had taken only a few months before.

Without notice to the industry, the Commission made those far-reaching decisions to make it possible for general commodity carriers to handle household goods without first showing a need for the service or fitness to offer the service to the public. It totally ignored the fact that Congress had expressly found that the household goods moving industry was so distinguished from the rest of the trucking business that its regulation should be addressed in an entirely separate piece of legislation—the Household Goods Transportation Act of 1980.

It is difficult to imagine a way in which Congress could have stated more clearly its perception of the household goods moving industry as unique and in need of special treatment. Yet the ICC did not hesitate to open up the industry to anyone with general commodity authority, summarily overriding the concerns expressed by the legislative branch for the industry's financial condition and unique structure and for the need to provide special protection of individual shippers.

As mentioned in the introduction, the U.S. Court of Appeals for the Fifth Circuit has totally disagreed with the Commission. The Court recognized, as did Congress, that household goods commodities and shippers are indeed unique. The Court directed the Commission henceforth to only issue operating authority to those that affirmatively show they are fit, willing and able to provide household goods moving services to the consuming public.

THE INTERSTATE COMMERCE COMMISSION'S FAILURE TO EMBRACE THE WILL OF CONGRESS RESULTS FROM RELIANCE UPON ERRONEOUS INFORMATION

For years the Commission has relied upon complaint data to justify pervasive operational rules for the household goods moving industry. In the Sub-36 proceeding the ICC again relied upon complaint statistics, ostensibly from a mass of dissatisfied consumers, and rejected the industry's suggested zero-based regulations. In doing so, the Commission contends that past practices of the household goods moving industry demonstrate that significant numbers of individual shippers have had serious complaints with the companies moving their household goods. The ICC bases this conclusion on a report entitled, "Summary of Shipments Transported and Complaints Received, Household Goods Carriers," which is disseminated to the general public as part of the Commission's "Consumer Advisory on Complaint and Performance Data on Household Goods Movers." To prepare this complaint record the Commission takes the annual number of complaints against a carrier and divides it by the total number of shipments delivered. This ostensibly give a "percentage of shipments resulting in complaints."

This procedure has serious deficiences that results in publication of inaccurate information which erodes public confidence in the industry and furnishes the Commission with a convenient excuse to continue to interfere with the day-to-day operations of carriers.

The industry has long thought tnat the Commission's complaint figures are highly inflated or erroneous, or both. Because of this suspicion, a number of carriers conducted analytical studies of complaint data which compared the records obtained from the Commission with their own shipment files. These analyses have shown an unacceptable error factor in the Commission's figures. The Commission has inflated the carrier's "percent of shipments resulting in complaints" in a number of ways.

1. Most apparent are the duplications. The Commission records successive communications of one shipper, as separate complaints. In some cases, duplications result from inaction on the part of the Commission. If the Commission does not timely relay a shipper complaint to the carrier, the shipper will call the Commission again and again. These communications are dutifully entered into the system as additional complaints.

2. Another source of inaccuracy is the Commission's inclusion of communications concerning non-shippers, including inquiries or "complaints" from owner/operator drivers, household goods agents and "others" that could not be identified as connected with a carrier's shipments.

The most recent, as well as extremely revealing, study of ICC complaint data was just completed by North American Van Lines on their 1980 complaint data. The following information was compiled and shows a 53 percent error factor:

Complaints reported by ICC 1980	2,517
Duplications	472
Net complaints (all types)	2,045
Complaints reported that were nonshippers	128
Net shipper complaints	1,917
Total complaints not received or unidentifiable	726
Net complaints recorded as received by NAVL 1980	1,191

Of the duplications, 378 were the same shipper and same subject and 94 were the same shipper, different subjects. Of the 128 that were non-shipper complaints, 104 were owner/operators, including 10 same driver, same subject. The balance were either non-North American or non-shipper related. Another interesting statistic that developed was the totally confusing coding of approximately 70 shipments that were classified both as to nature and reason for complaint only as "other".

Also in 1980, North American experienced typical Commission inefficiency in handling consumer complaints. This undoubtedly was also one of the reasons they were prompted to analyze their 1980 complaint statistics. When the Commission's Regional Complaint Center concept was originated in 1980, North American was within the Chicago Region. Effective March 1, 1980, North American was placed under the Philadelphia Region. In making the transition, the Chicago region was ordered to refer all North American complaints received after January 31 to Philadelphia. Complaints that pre-dated January 31, 1980 were to be sent to the Indianapolis District Office for direct handling with North American by the officer in charge of the Commission's Indianapolis office. When those complaint forms were brought to the North American offices in February, North American worked for nearly three weeks sorting out and responding to over 400 complaints that had not been previously relayed to North American by the Chicago office. Some of the complaints given to North American in February 1980 were dated in October 1979.

The controversy between the industry and the Commission over the accuracy of statistics is not new. In 1979, Global Van Lines conducted an analysis of their 1978 complaint data. That study disclosed an inordinately high number of duplications and complaints unrelated to any identifiable Global shipments. After these discrepancies were discovered, the industry's concern was conveyed to officials at the Commission. Unfortunately, the defective reporting procedures were not corrected. Global did an identical study in 1980 of their 1979 statistics and that analysis indicated a 27.4[illegible]ercent error factor. Wheaton Van Lines' study of their complaint statistics show a shocking 51 percent error factor for duplications and non-identifiable complaints. How can the ICC be allowed a "performance standard" involving a 51 percent error factor while they insist upon 90 percent accuracy of industry in estimating?

By comparison, it is interesting to review the figures for the moving industry shown in the just-released Council of Better Business' "Statistical Summary 1980—Better Business Bureau's Inquiry and Complaint Activity." The 151 Better Business Bureaus throughout the country handled about 1½ million complaints concerning product or service transaction. Nationwide moving and storage companies received a little over 3,321 complaints and ranked 29th on the Better Business Bureaus' list of businesses receiving complaints. Furthermore, these 3,321 complaints received by the Bureaus covered local moving and storage problems as well as interstate transportation.

The erroneous information upon which the Commission relies to continue its intrusiveness into industry affairs is clear witness that accuracy plays a small role in justifying the Commission's actions. The complaint figures that the Commission publishes fall far short of properly reflecting the level of responsive service that carriers render to the public. Unfortunately, the same information that we are now discovering to be impacted with errors also provided a part of the foundation upon which Congress structured new enforcement powers for the Commission in the Household Goods Transportation Act.

In August 1981, a meeting of representatives from the AMC and the ICC was held to discuss the accuracy of the Commission's published complaint data. The Commission was reminded that public reliance on the accuracy of government statistics places a heavy obligation on the Commission to assure the purity and objectiveness of its published statistics. As a result of that preliminary meeting, a joint AMC/ICC task force has been appointed to recommend corrective procedures.

THE FAILURE OF THE DEPARTMENT OF DEFENSE TO COMPLY WITH THE ACT

Section 6(b)(3)[3] of the Household Goods Transportation Act directs that all federal agencies that are involved in the movement of household goods are to comply with the objectives of the Act to reduce paperwork and regulations. The House report specifically notes that DOD should actively pursue this objective.

The DOD, of course, has very heavy involvement in the movement of household goods on behalf of service members. And we agree wholeheartedly that every service member who has to move should receive a high quality move. We in the household goods industry have always endeavored to accomplish this desirable goal,

[3] "To the maximum extent feasible, the provisions of this section, including the amendments made by this section, shall apply to rules and regulations pertaining to transportation of household goods, for the United States Government issued by departments, agencies, and instrumentalities of the United States (other than the Interstate Commerce Commission), including rules and regulations established for the distribution of such traffic, to the same extent as such provisions apply to rules and regulations issued by the Interstate Commerce Commission."

and in pursuit of this end, have tried to work very closely with the various military services.

We believe it is clear that DOD has ignored the will and mandate of Congress to reduce regulation and paperwork as they were directed.

The Military Traffic Management Command (MTMC), which manages the movement of household goods for the DOD, has continued to crank out needless and burdensome regulations which result in thousands of pieces of paper, increased administrative time and increased carrier cost, not to mention frustration. The sad fact is that their numerous new regulations do nothing to improve service for the military member.

As mentioned previously, our industry works closely with MTMC and with the various armed services to improve regulations and provide the moving services that are needed by the DOD. However, more often than not, our industry's practical opinions are ignored by MTMC. This has been the case with their Carrier Evaluation and Reporting System (CERS). This quality control and tonnage distribution system was implemented in 1976. After much debate and discussion on the retention of this system, the industry prevailed upon Senator Thurmond to study the matter and as a result the GAO filed its first review (B-152283) in October 1977. This report indicated the program was too new to be judged, and they recommended reviewing it at a later date. In the meantime, our industry continued to suffer mountains of excess paperwork and confusing complexity of CERS.

A second GAO study was conducted at the request of Senator Schmitt. This report (B-200212), released October, 1980, concluded the following: "Although the CERS objective of high quality service at reasonable cost is good, current implementation practices preclude DOD's attaining this objective. We found that while administrative costs are increasing, additional benefits attributable to CERS are questionable."

"We also found that: DOD's emphasis on awarding shipments by cost over quality of service limits CERS' usefulness; the current evaluation process is unreliable; CERS' scorces and rankings do not reflect quality of service; CERS' complexity causes confusion and diverse implementation; and CERS does not appear workable in the peak shipping season."

* * * * * * *

"However, most (military) installations have added personnel to process CERS paperwork. These additional personnel costs are estimated to be $3 million annually.

* * * * * * *

"However, as described later, we found the CERS Evaluation process to be unreliable because of current implementation practices."

It was anticipated that this second GAO report would result in meaningful improvement. Instead, however, a more onerous program, CERS II, was designed to replace CERS I. Fortunately, CERS II is on hold at the request of Senator Thurmond, and GAO has requested to again study MTMC's newest program. We find it most interesting tht MTMC apparently learned nothing from prior GAO evaluations.

Another example of excess regulation by DOD is the Air Force's Direct Procurement Method (DPM) contracts for pack-and-crate services. These small shipments move continously in interstate and foreign commerce. They are usually composed of small baggage and personal effects rather than a member's entire household effects. The services are most often performed by local, small businesses, and entail, as the term implies, packing these items in crates and securing them for shipment. In many respects, these pack-and-crate service are very labor-intensive and we note with great interest that the Act provided an expedited and somewhat lessened entry standard for obtaining ICC authority to perform these service.[4]

Historically, these pack-and-crate contracts have not been particularly troublesome to the small and unsophisticated business person. More importantly, however, these agreements have not presented any significant problems for the armed services nor has the Air Force offered service failure as the justification for its proposed revision. Nonetheless, the Air Force's newly developed format for these contracts is well in excess of 200 pages of conflicting and confusing legalistic provisions.

The mere increase in size and requirements found in the new contracts will not improve services to the member. To the contrary, the resulting confusion felt as a result of these new requirements will actually cause a deterioration of service and efficiency afforded the member. Put simply, this program will not work, as it is not designed to properly evaluate the services provided to the military. The procedures

[4] Section 10. Government Traffic, 49 U.S.C. 10922(b)(9).

for quality control originate in Military Standard 105–D, which clearly states that its purpose is to scientifically sample the quality of end-run assembly line products, specifically rounds of ammunition. Obviously, our service to individuals does not equate to taking samples of ammunition.

The penalties for failure to achieve the quality control targets are dollar deductions from pack-and-crate revenues. For example, if a report is turned in late, dollars are deducted. If a container is marked improperly, dollars are deducted. These penalties apply even if the member suffers no loss, damage, inconvenience or delay to the shipment. We think this is going backwards, because the Act as administered by the ICC makes it clear that harm to the owner of household goods should be the predicate for assessment of penalties.

The industry has urged the Air Force to delay implementation of these new DPM contracts until a complete evaluation of their necessity can be made. Nonetheless, as with the CERS program, it appears that the Air Force is continuing to forge ahead with a new layer of regulation.

These are only two examples of unnecessary regulation by DOD. There are many other instances which afford witness that DOD is ignoring the objectives of the Act to reduce regulations and paperwork.

CONCLUSION

Section 2(b) of the Household Goods Transportation Act provides for oversight hearings by the appropriate authorizing committees of Congress "to ensure that the Act is being implemented according to congressional intent and purpose." We express our appreciation and congratulations to you, Mr. Chairman, for your conscientious exercise of this oversight responsibility. We are grateful for the opportunity to express our very strong belief that the Interstate Commerce Commission and the Department of Defense have not implemented the Act consistently with the clear intent of Congress.

We in the household goods moving industry supported the legislation because we believe with Congress that increased competition and a reduction in unnecessary regulation would result in better and more efficient service to the consumer. We had high hopes for the future as the Household Goods Transportation Act was signed into law. Unfortunately, these hopes were dashed when the Commission gave notice of proposed new operating regulations which were completely contrary to the letter and spirit of the legislation.

As we have discussed, the Commission and DOD have persisted in ignoring purposes clearly established by Congress in nearly every action taken since passage of the Act and the difficult and delicate policy decisions made through the legislative process are falling by the wayside one by one.

It is altogether proper, Mr. Chairman, for Congress to carefully scrutinize this situation. With the broad scope of modern government, we know how difficult it is for Congress to make certain that its goals are not distorted or reversed by administrators charged with carrying forth those goals. We applaud your conscientiousness in conducting these timely hearings as a demonstration that oversight can be an effective tool in making certain our government responds to the needs to its people in accordance with the law.

Thank you, Mr. Chairman, for affording use the opportunity to appear before you today.

[The following information was subsequently received for the record:]

NORTH AMERICAN VAN LINES,
Fort Wayne, Ind., October 27, 1981.

Senator JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science and Transportation, Senate Office Building, Washington, D.C.

DEAR CHAIRMAN DANFORTH: As the last witness on the last panel scheduled to testify at the oversight hearing October 20 on the Household Goods Transportation Act of 1980, it was my purpose to fashion the closing remarks around that portion of the Declaration of Policy in the new law which reads:

"The appropriate authorizing committees of Congress shall conduct periodic oversight hearings on the effects of this legislation . . . to ensure that this Act is being implemented according to congressional intent and purpose."

With relentless precision, however, the red light glowed and the hearing was concluded, without my observations. I am most grateful, therefore, for the opportu-

nity you graciously offered to submit my statement for inclusion in the record at a later date.

If the centerpiece of the quoted statutory language is simply the conduct of a "hearing", my remarks will be misdirected since I have assumed the dominant thrust is the imposition of a duty upon members of the authorizing committees to ensure by all appropriate means that the Act is implemented according to Congressional intent and purpose. If that duty can be discharged by a mere public hearing, without more, then the Household Goods Transportation Act of 1980 will inevitably fail to achieve the stated Congressional objectives unless, of course, the new administration in the Interstate Commerce Commission voluntarily makes a self-examination of its own direction, or unless appropriate officials in the executive branch take notice of the executive branch take notice of the intent and purposes relative to its own departments and agencies.

Should these voluntary results not be forthcoming, the oversight hearing provision could, contrary to Congressional intent, contribute to the failure of the law. It is only natural that any department or agency not contradicted by the authorizing committee following an oversight hearing will assume that it has carried its burden and will continue on course. Hence, if the oversight provision, now a part of the law itself, is to have any effect, the indvidual members of the authorizing committee must affirmatively perform the duty imposed upon them by law through enlightened determination and appropriately communicate the result.

The authorizing committee members, moreover, cannot rely upon the pending court appeal from the Commission's order in Exparte MC 19 sub 36 for relief from their statutory obligation to ensure that Congressional intent and purpose is implemented. A court owes no such duty. Indeed, a court is without power to command the Commission to rewrite an order to achieve what the court might perceive to be the intent and purpose of the Congress. It must be remembered that there is as yet no "Bumpers' Amendment", and that the "Laxalt Bill" has not yet become law. The inadequacies of court remedy is perhaps the precise reason the oversight remedy was incorporated in the statute.

The gist of the intent and purpose of the Act, gleaned from the Policy section and the history recorded in Senate and House Reports accompanying S. 1798, may be summarized as follows:

(1) The financial condition of the moving industry must be improved in order that the carriers will be able to maintain adequate service levels;

(2) Command and control service regulations practiced by the Commission and other governmental agencies, particularly the Department of Defense, foster poor service for the public; hence;

(3) Operational flexibility, service competition, and improved information relative to performance, rights and remedies will better serve the needs of individual shippers.

Both the Senate and House cited the poor operaring ratios of the carriers. The House predicated its finding on an operating ratio of 98.09 for the top ten carriers. The same ten carriers had deteriorated to 98.6 for the first half of 1981. While this adverse trend could reverse in the third quarter, the fourth quarter is questionable and the future is indeed bleak, as pointed out by Mr. Epstein for the Household Goods Carriers Bureau, if the Commission's fuel surcharge order is implemented without dramatic rate refief. However, as Chairman Taylor correctly stated at the hearing, following recitation of various pertinent statistics, it is too soon to know the financial impact of the new law.

But there is another potential financial impact predicated upon an issue squarely before the authorizing committee, an issue that if decided now could result in substantial savings in litigation costs, forms redesign costs, and training costs for some 6,500 agents and their employees and many thousands of drivers. That issue is whether the industry is correct in its zero-base approach to regulation as described by my associates or whether the Commission is correct in the reverbalization of its old regulatory notions that produced regulation characterized by the Commission's own independent law judges as early as 1973 as far from perfect, confused and conflicting, impracticable, and oppressive of the carriers in comparison with the value accorded shippers.

Moreover, a responsible spokesman for the Commission said about Senate Bill 1798 in the course of its development that he saw nothing in it which purported to change greatly the Commission's mandate. The same spokesman, later delegated authority to write the regulations in question today, informed industry before S. 1798 became law that the new regulations were 99 percent complete. Indeed they were announced only one day after the Bill was signed by the President.

Mr. Chairman, in no sense do I question the sincerity of the perception behind the continuation of the old command and control regulation philosophy. It is the accept-

ed consumerist approach to managing business. Indeed, the Commission itself renamed the office to administer these rules, "The Office of Consumer Protection." It will be remembered moreover, that the Congress itself once came near creating an Office of Consumer Protection. But it didn't, and Chairman Taylor has wisely abandoned that terminology. Unfortunately, we have seen no re-examination of the same thought process that led to the creation of the regulations here in question.

As a long-time observer of bureaucracy in action, it is my opinion that successive administrations build upon whatever is in place, and defend whatever is before them. Thus while we have a new administration at the Commission and there have been realignments in staff positions, and the addition of new faces, we see no indication that the Commission has re-examined the mind-set that formulated these regulations. Indeed, it is probable and logical that the only issue that surfaced is whether the order is defensible in court—a far different matter, as I previously explained.

While I don't suggest that it will cost less to train agents and drivers to comply with the zero-based regulations advanced by my colleagues, I do join them in urging that since the Commission itself has found this direction "desirable" it be encouraged to provide an opportunity to try before embarking upon a course that we know from experience will stiffle operational flexibility and service competition.

Since the hearing on October 20, we have been informed by the President of the American Movers Conference that you may be amenable to further pursuit of the heavy-handed regulation by the military establishment. I assure you that we shall appreciate that opportunity. Indeed, one must question why Government regulation is superimposed upon Government regulation, not only with reference to the Department of Defense but other agencies as well. If service competition has more to offer, as I believe, it is truly a waste of resources, including valuable manpower.

Again, as stated in AMC's concluding remarks, we applaud your conscientiousness in conducting these timely hearings as a demonstration that oversight can be an effective tool in making certain our Government responds to the needs of people and business in accordance with the law. We trust that you and other members of the authorizing committee will follow up by a strong communication to the Commission to ensure that the intent and purposes of the Congress are indeed implemented.

Respectfully yours,

G. ZAN GOLDEN,
Senior Vice President.

[Whereupon, at 11:10 a.m., the hearing adjourned.]

○